

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERMA L. MOORE and DEPARTMENT OF THE ARMY,
4th FINANCE BATTALION, Fort Carson, CO

*Docket No. 99-1554; Submitted on the Record;
Issued September 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she is entitled to a schedule award for a permanent impairment to her right upper extremity.

On July 26, 1995 appellant, then a 60-year-old supervisor voucher reviewer, filed an occupational disease claim alleging that factors of employment caused carpal tunnel syndrome. By letter dated October 6, 1995, the Office of Workers' Compensation Programs accepted that this condition was employment related. On January 31, 1996 appellant underwent release surgery on the left. Following development of the medical record, by decision dated November 12, 1996, the Office granted her a schedule award for a 10 percent loss of use of the left arm for a total of 31.20 weeks of compensation, to run from June 5, 1996 to January 9, 1997. On February 4, 1997 appellant filed a claim for a schedule award for impairment of the right upper extremity. By letter dated February 5, 1997, the Office informed her that it was premature to develop this claim, as she had not reached maximum medical improvement. On April 16, 1997 appellant had release surgery on the right. In reports dated April 7 and 8, 1998, appellant's treating physician, Dr. Arnold L. Ahnfeldt, a Board-certified orthopedic surgeon, evaluated her right and left upper extremities and concluded that she had a seven percent impairment of the right upper extremity and a two percent impairment on the left. On January 14, 1999 an Office medical adviser concurred with Dr. Ahnfeldt's findings. Following an Office query regarding appellant's left upper extremity, by report dated February 1, 1999, the Office medical adviser related that appellant had a two percent total permanent impairment on the left and was not entitled to an additional two percent for the left upper extremity. By letter dated March 26, 1999, the Office denied appellant's claim for a schedule award for her right upper extremity, stating that as Dr. Ahnfeldt advised that she was only entitled to a total of 9 percent impairment for both upper extremities and, as she had already received a schedule award for a 10 percent impairment of the left upper extremity, she was not entitled to a schedule award for her right upper extremity. The instant appeal follows.

The Board finds that this case is not in posture for decision regarding appellant's entitlement to a schedule award for her right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. In the instant case, appellant filed a claim for a schedule award for permanent impairment of her right upper extremity. The Office, however, while recognizing that the evidence supported that she had a 7 percent impairment of the right upper extremity, denied the claim on the grounds that she had previously received a schedule award for a 10 percent impairment of the left upper extremity and that, because her physician now stated that she demonstrated a mere 2 percent impairment on the left, she was, therefore, not entitled to a schedule award on the right.

Section 8107(c)(20) of the Act provides that, in the case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively.³ The fact that appellant established that she had a 10 percent impairment of the left upper extremity in 1996 and was evaluated as having a 2 percent impairment of that extremity in 1998 does not mean that the Office can deny her claim for a permanent impairment of the right upper extremity on the grounds that she has received a greater total award than she would be entitled to for both upper extremities. The case will therefore be remanded to the Office to develop appellant's claim for a schedule award for permanent impairment of her right upper extremity.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ See *Cleo R. Hatch*, 49 ECAB ____ (Docket No. 96-2629, issued August 19, 1998).

⁴ 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* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses. See *James J. Hjort*, 45 ECAB 595 (1994).

The decision of the Office of Workers' Compensation Programs dated March 26, 1999 is hereby vacated and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
September 25, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member