

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE M. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 00-1116; Submitted on the Record;
Issued March 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent impairment of the left upper extremity and a 20 percent impairment of the right upper extremity.

On November 24, 1997 appellant, then a 40-year-old clerk, filed a claim alleging she developed carpal tunnel syndrome in both hands which was causally related to her federal employment. The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome. Appellant did not stop work.

On September 22, 1998 appellant filed a claim for a schedule award. She submitted two medical reports from Dr. Eric D. Strauss, a Board-certified orthopedic surgeon, dated October 29 and November 12, 1997; electromyograph (EMG) and nerve conduction velocity (NCV) studies dated November 7, 1997; and an August 12, 1998 medical report from Dr. David Weiss, an osteopath. Dr. Strauss performed a physical examination of appellant and diagnosed bilateral carpal tunnel syndrome. Dr. Francis J. Bonner, Board-certified in physical and rehabilitative medicine, interpreted the results of the EMG and NCV tests performed on November 7, 1997. The EMG studies of muscles of both upper extremities were normal. The NCV studies were performed on the medial, radial and ulnar nerves bilaterally. The studies revealed bilaterally moderately severe carpal tunnel syndrome. Dr. Weiss evaluated appellant for permanent impairment arising from her accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (Fourth ed. 1993) (A.M.A., *Guides*). He determined appellant sustained a 30 percent impairment of both the right and left wrist based on entrapment neuropathy of the median nerve pursuant to Table 16, page 57 of the A.M.A., *Guides*.

Dr. Weiss' report and the case record were referred to the Office medical adviser who determined that appellant sustained a 10 percent impairment of the right and left upper extremity.

In a decision dated November 19, 1998, the Office granted appellant a schedule award for a 10 percent permanent loss of the right and left upper extremity.

Appellant, through her attorney, requested a hearing before an Office hearing representative which was held May 27, 1999. She submitted an addendum medical report dated January 27, 1999 from Dr. Weiss. He indicated that the nerve conduction studies dated November 7, 1997 revealed moderately severe bilateral carpal tunnel syndrome, consistent with a 30 percent impairment rating.

Dr. Weiss' addendum report was referred to the Office medical adviser who determined that appellant sustained a 10 percent impairment of the left upper extremity for mild carpal tunnel syndrome and 20 percent impairment of the right upper extremity for moderate carpal tunnel syndrome.

In an August 10, 1999 decision finalized on August 12, 1999, the hearing representative modified the decision of the Office dated November 19, 1998. Based on the Office medical adviser's review of Dr. Weiss' addendum report the hearing representative determined that appellant was entitled to an additional schedule award of 10 percent to the right arm for a total schedule award of 10 percent of the left upper extremity and 20 percent for the right upper extremity.

The Board finds that this case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.¹ For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, as the standard for determining the percentage of permanent impairment and the Board has concurred in such adoption.²

In this case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome and paid appropriate compensation. The Office determined that appellant was entitled to a schedule award for 10 percent for the left upper extremity and 20 percent for the right upper extremity based upon the Office medical adviser's August 4, 1999 report. The Board finds that there is a conflict in medical opinion between the Office medical adviser and Dr. Weiss, appellant's treating physician.

The Office medical adviser opined that there was not equality in severity of impairment between the left and right upper extremity as noted in the electrodiagnostic studies of November 7, 1997. The Office medical adviser indicated that the electrodiagnostic tests were interpreted as revealing "bilateral moderately severe carpal tunnel syndrome;" however, his findings as determined by appellant's subjective complaints, physical findings and electrodiagnostic data revealed a 10 percent impairment of the left upper extremity for mild

¹ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

² *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961), *Francis John Kilcoyne*, 38 ECAB 168 (1987).

carpal tunnel syndrome and 20 percent impairment of the right upper extremity for moderate carpal tunnel syndrome.³ By contrast, Dr. Weiss in his reports dated November 12, 1998 and January 27, 1999 indicated that with positive subjective and objective findings as well as the positive EMG and NCV tests of November 7, 1997, appellant suffered from moderately severe bilateral carpal tunnel syndrome which is associated with a 30 percent impairment rating according to the A.M.A., *Guides*.⁴ Dr. Weiss has consistently supported a 30 percent impairment of the right and left wrists, while the Office medical adviser found that appellant had a 10 percent impairment of the left upper extremity and 20 percent impairment of the right upper extremity. Each doctor properly referenced the A.M.A., *Guides* in calculating impairment.

Section 8123(a) of the Act provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁵ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁶ The Board finds that the Office should refer appellant to an impartial medical specialist to resolve the medical conflict regarding the extent of permanent impairment arising from appellant’s accepted employment injury.

Therefore, in order to resolve the conflict in the medical opinions the case will be remanded to the Office for referral of the case record, including a statement of accepted facts, and appellant, to an impartial medical specialist for a determination regarding the extent of appellant’s left and right upper extremity impairment as determined in accordance with the relevant standards of the A.M.A., *Guides*.⁷ After such further development as the Office deems necessary, an appropriate decision should be issued regarding the extent of appellant’s left and right upper extremity impairment.

³ See page 57, Table 16 of the A.M.A., *Guides*.

⁴ See page 57, Table 16 of the A.M.A., *Guides*.

⁵ 5 U.S.C. § 8123(a).

⁶ *William C. Bush*, 40 ECAB 1064 (1989).

⁷ See *Harold Travis*, 30 ECAB 1071, 1078-79 (1979).

The August 12, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
March 2, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member