U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAXINE COE and OFFICE OF PERSONNEL MANAGEMENT, EMPLOYEE & LABOR RELATIONS, Washington, DC

Docket No. 00-1237; Submitted on the Record;
Issued March 5, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained more than a 10 percent permanent impairment of the left upper extremity for which she received a schedule award.

On March 10, 1995 appellant, then a 36-year-old benefits specialist, filed an occupational disease claim alleging that her federal duties caused and aggravated her carpal tunnel syndrome. The Office of Workers' Compensation Programs accepted the claim for aggravation of bilateral carpal tunnel syndrome and left carpal tunnel release.[1] Appellant did not stop work.

On May 31, 1998 appellant filed a claim for a schedule award. The Office requested that appellant's treating physicians, Drs. Cates and Lemmons examine appellant to determine the extent of permanent impairment. On July 29, 1998 the Office was advised that Dr. Cates was unable to complete requests relating to disability using the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*. On October 13, 1998 Dr. Lemmons replied that she was not qualified to evaluate such permanent impairment and referred appellant to Dr. Herbert Henry.

In a report dated December 9, 1998, Dr. Henry reviewed appellant's medical history and discussed his physical findings. He indicated that an examination of appellant's wrists revealed the previous left wrist surgery, positive Phalen's or Tinel's signs on the left and mildly positive Phalen's test on the right. Dr. Henry noted that appellant had residual neuropathy in the left

[1] The Office accepted the claim for aggravation of bilateral carpal tunnel syndrome and left carpal tunnel release after it considered medical evidence including a report from Dr. Maurice Cates, a Board-certified orthopedic surgeon dated July 6, 1995. In his report, Dr. Cates stated that appellant experienced symptoms of pain and numbness in both hands since January 1994, which have been aggravated by work duties. He reported that her symptoms resolved somewhat in ensuing months and recently increased on the left. Dr. Cates stated that studies on April 25, 1995 revealed a severe left carpal tunnel test on the left, however, the right hand reported to be normal. He diagnosed severe left carpal tunnel syndrome, clinical right carpal tunnel syndrome, less severe and recommended carpal tunnel release surgery on the left.

wrist and mild carpal tunnel on the right. He then stated: "It is felt that because of her neurological changes in her left upper extremity that she has a 10 percent disability of the left upper extremity (A.M.A., *Guides*, 4th edition, page 57, Chapter 3, Table 16)."[2]

On April 15, 1999 the Office medical adviser reviewed Dr. Henry's report and found that appellant reached maximum medical improvement on March 10, 1996. The Office medical adviser then determined that, pursuant to Table 16 on page 57 of the A.M.A., *Guides*, Dr. Henry's opinion was consistent with showing a 10 percent impairment of the left upper extremity.

By decision dated May 11, 1999, the Office awarded appellant compensation based on a 10 percent permanent impairment of the left upper extremity.

In a letter dated June 9, 1999, appellant requested a review of the written record. The Office subsequently referred the case file to another Office medical adviser, who reviewed appellant's case file and stated: "Using the available information and the table on page 57 of the A.M.A., *Guides*, I agree that [appellant] has a 10 percent impairment to the left upper extremity based on symptoms of mild residual left carpal tunnel syndrome. This estimate agrees with the previous estimate provided by Dr. Thompson (district medical adviser (DMA) note dated April 15, 1999 and Dr. Herbert dated December 9, 1998)."

By decision dated October 6, 1999, the hearing representative affirmed the May 11, 1999 decision. The hearing representative found that appellant had not established that she sustained greater than 10 percent impairment of the left upper extremity.

The Board finds that the Office properly determined that appellant has no more than a 10 percent permanent impairment of the left upper extremity for which she has received a schedule award.

The Federal Employees' Compensation Act[3] schedule award provisions set forth the number of weeks of compensation that are to be paid for permanent loss of use of the members of the body that are listed in the schedule. The Act does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter, which rests in the sound discretion of the Office. However, as a matter of administrative practice, the Board has stated: "For consistent results and to ensure equal justice under the law to 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 Office has adopted and the Board has approved the A.M.A., *Guides* as the uniform standard applicable to all claimants.[4]

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[2] Dr. Henry also submitted a questionnaire dated December 9, 1998, in which he indicated that appellant had an impairment rating of 10 percent of the whole body. The Board notes, however, that a whole body impairment is not compensable under the Act and not in accordance with the A.M.A., *Guides*.

[3] 5 U.S.C. §§ 8101-8193.

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

The Federal Procedure Manual (FECA) provides guidance for obtaining medical evidence from physicians required for a schedule award as follows:

> "To support a schedule award, the file must contain competent medical evidence which:
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> > (1) shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred ("date of maximum medical improvement" or DMI);
> >
> > (2) describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability; and
> >
> > (3) gives a percentage evaluation of the impairment (in terms of the affected member or function, not the body as a whole, except for impairment to the lungs). In members with dual functions, the physician should address both functions according to the A.M.A., *Guides*."[5]

The procedure manual further provides:

> "The attending physician should make the evaluation whenever possible. The report of the examination must always include the following:
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> > (1) A detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.
> >
> > (2) Form CA-1303 may be used to advise the physician of the information needed to determine permanent impairment and request submission of an appropriate report. If examination will be necessary, the claimant should be notified by Form CA-1311.
> >
> > (3) Except in uncomplicated amputations, the report should include an estimate of the impairment in terms of percentage. Where this information is missing, the claims examiner may ask the attending physician to provide it; if this fails, the claims examiner may ask the DMA to calculate the percentage. Where the A.M.A., *Guides* allow for expression of this percentage within a range, the physician may be asked why he or she assigned a particular percentage of impairment."[6]

[5] Federal (FECA) Procedure Manual, Chapter 2.0808, *Evaluation of Schedule Awards*, paragraph 6 (September 1994).

[6] *Id*. at paragraph 6(c).

In this case, Dr. Henry, the Office referral physician, examined appellant on December 9, 1998 and stated that, based on appellant's neurological changes in her left upper extremity, she has a 10 percent disability of the left upper extremity pursuant to Table 16, page 57 of the A.M.A., *Guides*. He did not, however, provide any measurements of appellant's left wrist or provide the computation of the percentage of impairment. An impairment to the upper extremity caused by entrapment neuropathy can be evaluated by measuring the sensory and motor deficits, or by use of Table 16 of the A.M.A., *Guides*, which provides a diagnosis-based value for impairment due to entrapment neuropathy. In this case, an Office medical adviser calculated appellant's upper extremity impairment pursuant to the A.M.A., *Guides* and properly noted that Table 16 of the A.M.A., *Guides* provided a permanent impairment value for mild median nerve entrapment neuropathy at the left wrist of 10 percent.

No medical evidence in the record establishes that appellant has more than a 10 percent permanent impairment of the left upper extremity, although appellant alleges on appeal that such evidence has been submitted. Appellant referred to a questionnaire signed by Marcea Burnette, on August 19, 1998, which indicates that appellant reached maximum medical improvement in December 1995 and sustained a 90 percent impairment of the upper extremity. The Board notes that Dr. Burnette whose medical credentials are unknown, has not been identified as one of appellant's treating physicians and was not requested to provide an impairment rating in this case. Therefore, the questionnaire signed Dr. Burnette has no probative value.

The May 11, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 5, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member