

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANKIE L. WRIGHT and U.S. POSTAL SERVICE,  
AUSTIN GENERAL MAIL FACILITY, Austin, TX

*Docket No. 02-546; Submitted on the Record;  
Issued July 16, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had no more than a 16 percent permanent impairment of the right arm.

On November 26, 1996 appellant, then a 50-year-old mailhandler, filed a claim for nerve entrapment syndrome of the hands which he related to constant use of his hands in handling mail. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral ulnar nerve entrapment at the elbows and authorized surgery for bilateral carpal tunnel release. On March 17, 1997 appellant underwent surgery for transposition of the ulnar nerve in the right elbow and neuroplasty of the median nerve in the right wrist. On April 15, 1997 appellant underwent surgery for a neuroplasty of the left wrist.

On January 23, 1998 appellant filed a claim for a schedule award. He submitted a September 23, 1997 report from Dr. L. Donald Greenway, a Board-certified orthopedic surgeon, who indicated that appellant had 120 degrees of flexion in the left elbow, which equaled a 2 percent permanent impairment and 10 degrees of extension in the left elbow, which equaled a 1 percent permanent impairment. Dr. Greenway concluded that appellant had a three percent permanent impairment of the left arm. He stated that appellant had 100 degrees of flexion in the right elbow, which equaled a 6 percent permanent impairment, 10 degrees of extension, which equaled a 1 percent permanent impairment, 70 degrees of pronation, which equaled a 1 percent permanent impairment and 80 degrees of supination, which showed no permanent impairment. He concluded that appellant had an eight percent permanent impairment of the right arm.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Don Johnson, a Board-certified orthopedic surgeon, for an examination and report on the extent of his permanent impairment due to his accepted condition. In a December 7, 1998 report, Dr. Johnson indicated that appellant had a full range of motion in both wrists. He reported that appellant had 100 degrees of flexion in the right elbow, which equaled a 6 percent permanent impairment and 10 degrees of extension, which equaled a 1 percent permanent impairment. Dr. Johnson indicated that appellant had full range of motion in pronation and

supination. He noted that appellant had 115 degrees of flexion in the left elbow, which equaled a 3 percent permanent impairment and 10 degrees of extension, which equaled a 1 percent permanent impairment. Dr. Johnson stated that appellant had decreased strength in his dominant right arm which calculated to 25 percent on the strength index on the right, which was a 10 percent permanent impairment of the right arm. He found no sensory changes in either arm and no intrinsic or extrinsic muscle atrophy. Dr. Johnson stated that appellant complained of weakness in the right arm but had no pain in his wrists or elbows and no residual numbness or tingling. He concluded that appellant had a 16 percent permanent impairment of the right arm and a 4 percent permanent impairment of the left arm. An Office medical adviser reviewed Dr. Johnson's report and concurred in his calculations.

In a January 27, 1999 decision, the Office issued a schedule award for a 16 percent permanent impairment of the right arm and a 4 percent permanent impairment of the left arm.

On November 6, 1999 appellant was pulling letter trays when he developed pain in his right shoulder. He underwent surgery on November 17, 1999 for a torn rotator cuff in the right shoulder. Dr. Greenway performed a partial synovectomy, decompression of the subacromial space and acromioplasty, excision of the distal right clavicle, tenorrhaphy of the rotator cuff and insertion of a pain pump catheter. The Office accepted appellant's claim for right shoulder sprain and tendinitis of the right shoulder and began payment of temporary total disability compensation effective November 18, 1999.<sup>1</sup>

On March 26, 2001 appellant filed a claim for a schedule award. He submitted a February 16, 2001 report from Dr. Greenway, who stated that appellant's right shoulder had abduction of 122 degrees, which equaled a 3 percent permanent impairment, internal rotation of 70 degrees which equaled a 1 percent permanent impairment and flexion of 160 degrees which equaled a 1 percent permanent impairment. Appellant reported that appellant had adduction of 70 degrees, external rotation of 56 degrees and extension of 50 degrees and therefore had no permanent impairment associated with those ranges of motion. He concluded that appellant had a five percent permanent impairment of the right arm. In an August 2, 2001 memorandum, an Office medical adviser reviewed Dr. Greenway's report and concurred in his permanent impairment calculation.

In a September 10, 2001 decision, the Office found that the 5 percent permanent impairment rating made by Dr. Greenway in his February 16, 2001 report did not exceed the 16 percent permanent impairment that appellant had already received for his right arm. The Office therefore denied appellant's claim for an increased schedule award.

The Board finds that the Office improperly denied appellant's claim for an increased schedule award.

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<sup>1</sup> In a July 25, 2000 decision, the Office found that appellant had no loss of wage-earning capacity after January 23, 1999 because his actual wages in his light-duty position equaled or exceeded the current wages of his former position. Appellant did not appeal from this decision. He returned to full-time limited duty on January 4, 2001.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>4</sup> has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

Appellant's initial schedule award was for loss of motion in the elbow and loss of strength in his right arm due to carpal tunnel syndrome and ulnar nerve entrapment. He then sustained an injury to his right shoulder, resulting in additional loss of motion in his right shoulder. Appellant's March 26, 2001 claim for a schedule award was not based on a claim of increased impairment in the parts of the arm previously evaluated but for the effects of a new injury on the right shoulder, which had not been previously evaluated. He is entitled to consideration of an additional schedule award for any permanent impairment of the arm caused by the November 6, 1999 employment injury to the right shoulder. The Office erred in denying appellant's claim for an increased schedule award under a mistaken impression that appellant was claiming for an increased impairment to the areas previously injured.

Dr. Greenway properly used the A.M.A., *Guides* and correctly calculated the extent of appellant's permanent impairment for loss of motion in the right shoulder.<sup>6</sup> However Dr. Greenway did not discuss whether appellant had any pain or weakness in the right shoulder due to the effects of the November 6, 1999 employment injury and resulting surgery. The case will be remanded so that the Office can request a report from Dr. Greenway on whether appellant had any pain or weakness in the right shoulder arising from the employment injury. After further development as it may find necessary, the Office should issue a *de novo* decision of the extent of appellant's permanent impairment of the right arm due to all the accepted conditions of the right arm, including his right shoulder.

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<sup>2</sup> 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> (5<sup>th</sup> ed. 2000).

<sup>5</sup> *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

<sup>6</sup> A.M.A., *Guides*, pp. 476-79, Figures 16-40, 16-46 (5<sup>th</sup> ed. 2000).

The decision of the Office of Workers' Compensation Programs dated September 20, 2001 is hereby set aside and remanded to the Office for further action as required by this decision.

Dated, Washington, DC  
July 16, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member