

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FANNIE M. THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
ZABLOCK MEDICAL CENTER, Milwaukee, WI

*Docket No. 02-734; Submitted on the Record;
Issued September 13, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established an impairment or entitlement to an additional schedule award.

On August 24, 1989 appellant, then a 28-year-old nurse's aide, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on that date she sustained a contusion to her right wrist in the performance of her federal employment. Her claim was accepted for right tendinitis, bilateral carpal tunnel syndrome with bilateral surgical release and consequential depression.

On April 25, 1994 the Office of Workers' Compensation Programs awarded appellant a schedule award for a 20 percent impairment to her right arm and 12 percent impairment to her left arm. In a decision dated April 2, 1996, the Office awarded appellant an additional schedule award for five percent impairment of the right upper extremity.

On September 29, 2000 appellant filed a claim for compensation for an increase in schedule award (Form CA-7). In support of her claim, she submitted a medical opinion dated February 6, 2001, wherein Dr. Eric S. Gaenslen, a Board-certified orthopedic surgeon, noted that appellant had left carpal tunnel release and left trigger thumb release on April 17, 2000 and that she had right carpal tunnel release on September 18, 2000. He rated appellant as having sustained permanent disability of two percent at the level of the right hand and three percent at the level of the left hand.

In a medical report dated March 5, 2001, Dr. David H. Garelick, the Office medical adviser, noted that Dr. Gaenslen did not indicate how he arrived at his impairment rating based on appellant's complaints and pertinent physical examination. He instructed the Office to ask Dr. Gaenslen for support for his recommendation, although he also noted that as appellant had already been awarded 10 percent impairment for each upper extremity, that he was doubtful that additional permanent partial impairment (PPI) would be awarded.

By letter dated May 23, 2001, the Office referred appellant to Dr. Vigay V. Kulkarni, a Board-certified orthopedic surgeon, for a second opinion. In an opinion dated May 30, 2001, Dr. Kulkarni diagnosed appellant with bilateral carpal tunnel syndrome, bilateral lateral epicondylitis and de Quervain's tenosynovitis right wrist. He noted:

“40-year-old female nursing assistant working at [the employing establishment] sustained a work exposure condition of [b]ilateral [c]arpal [t]unnel [s]yndrome in November 1989 for which she had bilateral carpal releases done. According to A[merican] M[edical] A[ssociation], *Guides [to the Evaluation of Permanent Impairment]* 4th edition she has 10 percent [p]ermanent impairment in each upper extremity. She is recommended to avoid occupation involving heavy lifting (no more than 10 pounds) and repetitive movement of upper extremities. She reached maximum medical [i]mprovement about three years ago.”

On May 31, 2001 Dr. Kulkarni issued a clarification wherein he responded to a query from the Office with regard to appellant's impairment under the 5th edition of the A.M.A., *Guides*. He indicated that utilizing page 495 of the A.M.A., *Guides*, as appellant “had evidence of abnormal EMG [electromyogram] and nerve conduction study on record, normal sensibility and opposition strength and residual symptoms, the examinee has five percent permanent impairment as related to each upper extremity.”

On August 17, 2001 the Office requested that the Office medical adviser provide his recommendation for further permanent partial impairment for appellant. In an opinion dated August 24, 2001, the Office medical adviser responded:

“According to the IME [impartial medical examination] performed by Dr. Kulkarni (May 30, 2001), the claimant reports pain, tingling, and burning in both hands and pain in the left elbow. The pain is aggravated by activities such as heavy lifting. On examination, the claimant has no atrophy and normal circulation. There are no palpable lumps noted. Her scars are well healed. She has normal range of motion of both wrists and digits. There is no tenderness over the median nerve, and Phalen's and Tinel's signs are negative. Grip strength is fair. Sensation is normal.

“Using the A.M.A., *Guides*, ... 5th edition, the claimant receives 26 percent sensory deficit for Grade 3 pain in the distribution of the median nerve (Table 16-10, p. 482). The maximum upper extremity impairment due to sensory deficit in the distribution of median nerve below the midforearm is 39 percent (Table 16-15, page 492). Using the Impairment Determination Method (p. 481), this corresponds to 10 percent PPI[] of the both upper extremities.”

By letter dated September 20, 2001, the Office requested that the Office medical adviser clarify his conclusions and specifically indicate whether the ten percent rating of permanent impairment he gave to appellant in both upper extremities was an additional percentage to the existing rating of 25 percent permanent impairment right upper extremity and 12 percent permanent impairment left upper extremity. The Office medical adviser responded:

“The 10 percent PPI recommendation for each extremity is not additional PPI to the claimant’s previous award. The current PPI recommendations are based on the most recent medical evidence provided (Dr. Kulkarni’s report -- May 30, 2001), calculated according to the current A.M.A., *Guides*, ... 5th edition. The PPI recommendations provided represent the claimant’s PPI based on the residua of her bilateral carpal tunnel syndrome after surgical treatment (left carpal tunnel release -- April 17, 2000; right carpal tunnel release -- September 18, 2000). The claimant has previously been awarded 25 percent PPI for the right upper extremity and 12 percent PPI for the left upper extremity (according to the memo to the DMA, September 20, 2001), based on bilateral carpal tunnel syndrome and right shoulder rotator cuff tendonitis. According to Dr. Conley’s (DMA) PPPI determination on November 5, 1995, 10 percent PPI for each extremity was recommended based on carpal tunnel syndrome (the remainder of the right upper extremity PPI was from the claimant’s right shoulder condition). Despite surgical intervention, the PPI resulting from carpal tunnel syndrome remains the same for each extremity (10 percent PPI) based on the medical evidence provided. Therefore, no additional PPI is awarded.

“According to Dr. Kulkarni’s records, the claimant continues to report[] pain, tingling, and burning in both hands, which is interferes with certain activities. Based on these findings, the claimant was awarded PPI based on persistent mild [G]rade 3 pain (Table 16-10, page 482) in the distribution of the median nerve (Table 16-15, page 492), as outlined in section 16.5 (Impairments of the [u]pper [e]xtremities [d]ue to [p]eripheral [n]erve [d]isorders). Dr. Kulkarni did not address the claimant’s residual pain in his PPI determination. This explains the difference in PPI recommendations provided.”

By decision dated October 30, 2001, the Office disallowed appellant’s claim for additional compensation benefits.

The Board finds that appellant has failed to establish that she is entitled to an additional schedule award.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing federal regulation,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In the instant case, appellant had received schedule awards for a 25 percent impairment of her right arm and a 12 percent impairment of her left arm. No physician opined that appellant had a greater impairment than that for which she already received awards. As the Office medical adviser properly applied the A.M.A., *Guides* to the physical findings of Dr. Kulkarni, and as there is no evidence in the record establishing that appellant has more than a 25 percent impairment to her right upper extremity and a 12 percent impairment of her left upper extremity, the medical evidence does not support any greater impairment than that for which she has received awards.

The decision of the Office of Workers' Compensation Programs dated October 30, 2001 is hereby affirmed.

Dated, Washington, DC
September 13, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ See *id.*, *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).