

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANA G. OLESON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 03-325; Submitted on the Record;*  
*Issued May 28, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established entitlement to a schedule award for a 20 percent impairment of her left upper extremity.

On March 27, 1998 appellant, then a 42-year-old manager, filed an occupational disease claim (Form CA-2) alleging that on September 25, 1997 she first realized her carpal tunnel syndrome was due to her employment duties. Her claim accepted for bilateral carpal tunnel syndrome and flexor tenosynovitis of the right ring and middle fingers and right carpal tunnel surgery. The Office of Workers' Compensation Programs also authorized right carpal tunnel surgery. Appellant stopped work on June 15, 1999 and elected retirement effective January 31, 2001.<sup>1</sup>

In an October 10, 2001 report, Dr. Kenneth L. Fults, an attending physician, concluded that appellant had a 13 percent impairment of the whole person based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a January 29, 2002 report, the Office medical adviser reviewed Dr. Fults' report and recommended referral to a second opinion physician who was familiar with using the fifth edition of the A.M.A., *Guides* and with Office procedure regarding schedule awards. The Office also noted neither the Act nor the regulations provide for the payment of a schedule award for the whole person or for the permanent loss of use of the back.

In a May 31, 2002 report, Dr. John A. Sklar, a second opinion Board-certified physiatrist, concluded that appellant had a 20 percent impairment of the right upper extremity and a 20 percent impairment of the left upper extremity. In reaching his determination, the physician

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<sup>1</sup> On April 1, 2001 appellant elected to receive civil service retirement benefits instead of disability benefits under the Federal Employees' Compensation Act.

utilized Table 16-10 at page 482 of the A.M.A., *Guides* (5<sup>th</sup> ed.). Based upon this table he determined:

“This claimant would fit into a [G]rade 3 in that classification with distorted superficial tactile sensibility (diminished light touch and two point discrimination), with some abnormal sensations or slight pain that interferes with some activities. The sensory deficit for [G]rade 3 from Table 16-10 is 26 [to] 60 percent. I have graded her at 50 percent impairment from that range. The value for the median nerve sensory function when compromised at the carpal tunnel is 39 percent. Multiplying the 50 percent grade by the 39 percent value for the median nerve, a 20 percent upper extremity impairment is determined.”

In concluding, Dr. Sklar opined that appellant had reached maximum medical improvement on May 9, 2001 and that she had a 20 percent permanent impairment in her right upper extremity and a 20 percent permanent impairment in her left upper extremity due to her accepted bilateral carpal tunnel syndrome.

In a July 5, 2002 report, the Office medical adviser reviewed Dr. Sklar’s report and concurred with Dr. Sklar’s opinion that appellant had a 20 percent impairment in both upper extremities.

On July 24, 2002 the Office issued appellant a schedule award for a 20 percent impairment of her left upper extremity.

The Board finds that appellant established that she has a 20 percent impairment of the right upper extremity.

The schedule award provisions of the Act<sup>2</sup> and its implementing federal regulation,<sup>3</sup> 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 all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

In this case, the Office determined that appellant had a 20 percent permanent impairment based on the findings of Dr. Sklar, who concluded that appellant had a 20 percent loss based on sensory deficit. Using Table 16-15, page 492, the physician determined that appellant’s impairment due to sensory deficit for the median nerve is 39 percent. Next, Dr. Sklar applied

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> *Horace L. Fuller*, 53 ECAB \_\_\_\_ (Docket No. 02-1181, issued September 6, 2002).

Table 16-10(a), page 482, to find appellant has a Grade 3 level of sensory deficit or pain, which equals a 50 percent impairment. The A.M.A., *Guides* indicate on page 494 that 50 percent, for percentage of sensory deficit, is then multiplied by the 39 percent impairment of the median nerve, resulting in a 20 percent impairment of the left upper extremity for sensory loss. The Board finds that Dr. Sklar correctly applied the A.M.A., *Guides* and that appellant has no more than a 20 percent permanent impairment of the left upper extremity.

The July 24, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>5</sup>

Dated, Washington, DC  
May 28, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> The record contains evidence that both Dr. Sklar and the Office medical adviser concluded that appellant had a 20 percent impairment of her right upper extremity. As the Office has not issued a final decision on this issue, it is not before the Board; *see* 20 C.F.R. § 501.2(c). Upon return of the case record, the Office should adjudicate appellant's entitlement to a schedule award for her right upper extremity.