

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENIFER L. RICH and U.S. POSTAL SERVICE,
POST OFFICE, Sherman Oaks, CA

*Docket No. 03-2081; Submitted on the Record;
Issued November 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a four percent permanent impairment of each upper extremity for which she received a schedule award.

On April 21, 1994 appellant, then a 36-year-old mail carrier, filed an occupational disease claim alleging that she sustained injuries to her hands caused by her work duties. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome. The Office has also accepted trigger finger of the right thumb and right middle finger.

On December 12, 2000 appellant filed a claim for a schedule award.

By decision dated April 4, 2003, the Office granted appellant a schedule award for 24.96 weeks of compensation based on a four percent permanent impairment of each upper extremity.

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

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. 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 American Medical Association, *Guides to the*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

Evaluation of Permanent Impairment (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

In a report dated December 26, 2002, Dr. Bunsri T. Sophon, a Board-certified orthopedic surgeon, provided findings on examination as follows:

“WRIST EXAMINATION: Examination reveals no deformity. There is no evidence of swelling, palpable mass, inflammation or tenderness. There is no evidence of muscle atrophy or spasm. There is full range of motion of both wrists.

“HAND EXAMINATION: Examination reveals non-tender, non-disfiguring vertical scars over the palmar surface of both proximal palms. There is a transverse non-tender, non-disfiguring surgical scar over the palmar surface of the base of the right thumb and right middle finger. There is no evidence of triggering, muscle atrophy, muscle spasm, tenderness, swelling, or palpable mass. There is full range of motion of both hands.

“NEUROLOGICAL EXAMINATION:

* * *

“MOTOR: Motor strength is grossly within normal limits.

“SENSATION: Sensation is normal bilaterally.

“REFLEXES: Reflexes are normal at 2+ bilaterally.”

“[Appellant’s] upper extremity injuries reached the level of maximal improvement when she returned to work in October 1996 after operative treatment. The disability interferes with [appellant’s] daily activities in lifting, which results in aggravation of her wrist and hand pain.”

In a report dated March 8, 2003, an Office medical consultant, Dr. Ellen Pichey, stated that she had reviewed Dr. Sophon’s December 26, 2002 report and she determined that appellant had a four percent permanent impairment of each upper extremity based on a Grade 4, 10 percent impairment due to sensory deficit or pain according to Table 16-10 at page 482 of the fifth edition of the A.M.A., *Guides* with a 39 percent maximum impairment of the median nerve according to Table 16-15 at page 492 (10 percent multiplied by 39 percent equals 3.9 percent, rounded to 4 percent). She found that appellant had no impairment due to loss of range of motion or loss of strength. However, Grade 4 in Table 16-10 at page 482 of the A.M.A., *Guides* describes the sensory deficit or pain for that grade as “[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity.” Dr. Sophon stated that appellant’s condition interfered with her daily activities in lifting which resulted in aggravation of her wrist and hand pain. His description of appellant’s

³ *Id.*

impairment does not match the Grade 4 description in Table 16-10 which indicates that pain is forgotten with activity. Therefore, Dr. Pichey's determination of appellant's permanent impairment of her upper extremities is not based on correct application of the A.M.A., *Guides* to the findings of Dr. Sophon. On remand, the Office should make a determination of appellant's permanent impairment of her upper extremities based upon correct application of the A.M.A., *Guides*. After such further development as it deems necessary, the Office should issue an appropriate decision on appellant's claim for a schedule award.

The decision of the Office of Workers' Compensation Programs dated April 4, 2003 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
November 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member