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NANCY L. GOLDSBERRY, Appellant	)	
	)	
and	)	Docket No. 04-1078
	)	Issued: August 19, 2004
U.S. POSTAL SERVICE, LAKEWOOD	)	
STATION, Lakewood, CO, Employer	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

On March 15, 2004 appellant filed a timely appeal from the January 26, 2004 merit decision of the Office of Workers' Compensation Programs granting her a schedule award for a three percent permanent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

The issue is whether appellant established that she has more than a three percent permanent impairment of the right upper extremity for which she received a schedule award.

On November 10, 1997 appellant, then a 43-year-old clerk, filed an occupational disease claim alleging that on August 22, 1997 she first became aware of her carpal tunnel syndrome and that this condition was caused by factors of her federal employment. Appellant stated that, after 11 years of repetitive motion on the letter sorting machines, she experienced problems in her wrists. She further stated that she “bid” off in hopes that it would clear up. She indicated that 11

more years of working as a clerk performing repetitive motion aggravated her condition. By letter dated January 28, 1998, the Office accepted appellant's claim for left carpal tunnel syndrome and tendinitis of the extensor muscles of the left elbow. Appellant underwent left carpal tunnel release surgery on February 16, 1998.

The Office received medical reports dated November 16 and December 14, 1998 from Dr. Frederick M. Paz, an internist, indicating that, while appellant was working at the employing establishment on November 16, 1998, she hurt her left elbow when she lifted a tub weighing approximately 25 pounds. By letter dated January 15, 1999, the Office advised appellant that this medical evidence described a new injury. The Office requested that appellant file a traumatic injury or an occupational disease claim for the injury sustained on November 16, 1998.

On July 29, 1999 appellant accepted the employing establishment's July 26, 1999 offer of a modified clerk position.

The Office received the October 18, 1999 medical treatment notes of Dr. Thomas G. Mordick, II, a Board-certified surgeon, revealing that appellant was seen for a follow-up of her partial ostectomy lateral epicondyle. He noted that appellant's wound looked fine and that she reported that her symptoms were gradually improving. Dr. Mordick scheduled her for a follow-up visit in four weeks. His December 15, 1999 medical treatment notes indicated that appellant was seen for a follow-up evaluation. Dr. Mordick noted that appellant was 10 weeks out from her surgery and her therapy notes revealed minimal progress. He discontinued appellant's therapy and scheduled a follow-up visit in three months.

On August 22, 2002 appellant filed a claim for a schedule award. The Office received a September 30, 2002 medical report from Dr. Ranee Sheno, a Board-certified physiatrist, finding that appellant was status post left carpal tunnel syndrome release, which was performed in February 1998 with possible recurrence of symptoms. Dr. Sheno also found that appellant was developing carpal tunnel syndrome on the right and that she had a left lateral epicondylar release. She opined that all of the above conditions were work related and recommended that appellant file a claim for her right upper extremity since it appeared to be a new injury. She advised appellant that before an assessment of her impairment could be made, she should find out the status of her carpal tunnel syndrome on the left side to see if any further treatment was necessary.

Dr. Sheno performed a nerve conduction study on October 15, 2002, which revealed very mild residual median neuropathy consistent with carpal tunnel syndrome. On the same date, Dr. Sheno referred appellant to Dr. Mordick for an evaluation of her carpal tunnel syndrome.

In a December 13, 2002 report, Dr. Sheno utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) in finding that appellant had a 13 percent impairment of the left upper extremity. Dr. Sheno determined that this impairment converted into an eight percent impairment of the whole person.

On January 27, 2003 an Office medical adviser reviewed Dr. Sheno's findings and agreed that appellant had a 13 percent impairment of the left upper extremity based on A.M.A., *Guides* 482, 484, 492, Tables 16-10, 16-11 and 16-15.

On January 23, 2003 appellant filed another occupational disease claim alleging that on August 22, 1997 she became aware of her right carpal tunnel syndrome and realized that it was caused by factors of her employment. In response to the Office's question as to why her claim was not filed with the employing establishment within 30 days of August 22, 1997, appellant stated that she was diagnosed with carpal tunnel syndrome in both hands, but only the left hand was hurting at that time. She submitted a copy of her acceptance of the employing establishment's offer of the modified clerk position. In a narrative statement, appellant provided that she began working as a substitute clerk for the employing establishment in 1974. She stated that she worked on a letter sorting machine during the 1970's and 1980's. She provided a detailed description of the operation of this machine, her job, which required repetitive finger and wrist manipulation, her wrist injury, which she noticed in 1978 and medical treatment. Appellant submitted an undated nerve conduction study report from a physician whose signature is illegible indicating that she had left median distal latencies consistent with left carpal tunnel syndrome. The employing establishment controverted appellant's claim on the grounds that it was untimely filed.

By decision dated February 6, 2003, the Office granted appellant a schedule award for a 13 percent permanent impairment of the left upper extremity.

In a letter dated April 1, 2003, the Office advised appellant that her claim had been upgraded from left carpal tunnel syndrome to bilateral carpal tunnel syndrome. The Office further advised appellant to submit any information regarding her right carpal tunnel syndrome, including medical bills, under the noted claim number. On May 14, 2003 the Office authorized appellant's request for right carpal tunnel release, which was performed on May 22, 2003 by Dr. Christopher S. Wilson, a Board-certified orthopedic surgeon.

The Office received Dr. Wilson's April 17, 2003 report indicating that appellant should continue working light duty and that she was referred to nerve conduction and electromyogram studies. Dr. Wilson's May 29, 2003 report indicated that appellant could return to light-duty work on June 4, 2003 with limitations regarding her right hand and wrist. The Office received treatment notes from Megan Brunell, appellant's occupational therapist, regarding the treatment of appellant's right carpal tunnel syndrome. Dr. Wilson's October 9, 2003 treatment notes addressed appellant's condition status post surgery on her right hand. His October 10, 2003 report indicated that appellant had returned to work, that she reached maximum medical improvement on October 9, 2003 and that she did not require maintenance care.

On October 16, 2003 appellant filed a schedule award claim for her right upper extremity. She submitted a duplicate copy of Dr. Wilson's October 10, 2003 report. By letter dated October 23, 2003, the Office requested that appellant take an enclosed letter to her treating physician to determine the extent of permanent impairment of the right carpal tunnel syndrome due to the August 22, 1997 employment injury utilizing the fifth edition of the A.M.A., *Guides*.

On December 9, 2003 Dr. Wilson stated that appellant had no pain and full wrist range of motion compared to the opposite side in all directions. He noted that appellant had weakness of grip and that pinch measurements based on Grade 4 median nerve strength according to the A.M.A., *Guides* 484, 492, Tables 16-11, 16-15, constituting a three percent impairment of the upper extremity. He indicated that maximum grip strength on the right equaled 40 pounds while

maximum grip strength on the left equaled 50 pounds. Dr. Wilson also indicated that appellant reached maximum medical improvement on October 9, 2003. He resubmitted his October 10, 2003 report.

On January 9, 2004 an Office medical adviser reviewed Dr. Wilson's findings. The Office medical adviser indicated that appellant reached maximum medical improvement on October 9, 2003. The Office medical adviser determined that the A.M.A., *Guides* allowed a maximum of 10 percent impairment for motor deficit based on the A.M.A., *Guides* 492, Table 16-15. The Office medical adviser further determined that appellant had Grade 4 muscle function of 25 percent according to A.M.A., *Guides* 484, Table 16-11. The Office medical adviser then multiplied 10 percent by 25 percent resulting in a 2.5 or 3 percent impairment of the right upper extremity.

On January 26, 2004 the Office issued a decision granting appellant a schedule award for a three percent permanent loss of use of the right arm.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees who sustain 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

### **ANALYSIS**

In this case, appellant's treating Board-certified orthopedic surgeon, Dr. Wilson, found that she had no pain, full wrist range of motion compared to the opposite side in all directions, weakness of grip and pinch measurements based on Grade 4 median nerve strength according to the A.M.A., *Guides* 484, 492, Tables 16-11 and 16-15, which constituted a three percent impairment of the upper extremity.

The Office medical adviser utilized the findings provided by Dr. Wilson and applied them to the proper tables of the A.M.A., *Guides* in determining that appellant had a three percent permanent impairment of the right upper extremity. As Dr. Wilson, the Office medical adviser, indicated that appellant reached maximum medical improvement on October 9, 2003. The Office medical adviser determined that the A.M.A., *Guides* provide a maximum of 10 percent impairment for motor deficit based on A.M.A., *Guides* 492, Table 16-15. The Office medical adviser further determined that appellant had Grade 4 muscle function of 25 percent according to

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (2003).

the A.M.A., *Guides* 484, Table 16-11. The Office medical adviser then multiplied 10 percent by 25 percent resulting in a 3 percent impairment of the right upper extremity.

The Office medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Wilson's December 9, 2003 findings and determined that appellant had a three percent permanent impairment of the right upper extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a three percent permanent impairment of the right upper extremity.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she has more than a three percent permanent impairment of the right upper extremity for which she received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member