

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BAMA L. PRICE and U.S. POSTAL SERVICE,
POST OFFICE, Clinton, MS

*Docket No. 03-1862; Submitted on the Record;
Issued February 13, 2004*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment of her right upper extremity for which she received a schedule award.

Appellant, a 50-year-old rural letter carrier, filed a notice of occupational disease on January 23, 1991 alleging that she developed bilateral carpal tunnel syndrome due to sorting, lifting and delivering mail while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for tendinitis on October 11, 1991. Appellant accepted a light-duty position of modified distribution clerk on March 17, 1994. By decision dated April 13, 1995, the Office granted appellant a schedule award for seven percent permanent impairment of her left upper extremity. The Office accepted the additional condition of bilateral carpal tunnel syndrome on August 2, 1996. Appellant filed a notice of recurrence of disability on December 1, 1998 alleging that on July 15, 1996 she experienced severe pain in her hands, arms and shoulder.

Appellant filed a second claim for an occupational disease on December 1, 1998 alleging that on March 31, 1986 she became aware of the conditions of right impingement syndrome with rotator cuff tendinitis, right lateral epicondylitis and right posterior interosseous nerve entrapment and mild carpal tunnel syndrome which she attributed to her employment duties. The Office authorized right carpal tunnel release, right posterior interosseous nerve release and right shoulder decompression on November 9, 1999. The Office also accepted this claim for right shoulder impingement on January 11, 1999. Appellant underwent a distal clavicle excision, right shoulder arthroscopy and lateral epicondylectomy on November 11, 1999. The Office entered appellant on the periodic rolls on February 29, 2000.

By decision dated September 26, 2000, the Office terminated appellant's compensation benefits on the grounds that she refused to work after suitable work was found for her. The Office vacated this decision on September 26, 2000.

Appellant requested a schedule award on August 9, 2001.¹ By decision dated January 31, 2003, the Office granted appellant a schedule award for a 10 percent permanent impairment of her right arm.

The Board finds that this case is not in posture for a decision as it requires additional development of the medical evidence.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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 Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant's attending physician, Dr. Felix H. Savoie, a Board-certified orthopedic surgeon, found that she had reached maximum medical improvement on April 20, 2000. He stated that appellant had normal motion of the right wrist, elbow and shoulder. Dr. Savoie stated that appellant had a 10 percent strength deficit. He further stated that appellant had some residual deficits from the median nerve with a little weakness and some residual deficits from the interosseous nerve with a little weakness. Dr. Savoie also noted that appellant had undergone a Mumford procedure in her shoulder. He found that appellant's impairments were due to her employment injury and resultant surgery and concluded that appellant had a 30 percent impairment of the right upper extremity. The district medical adviser reviewed the medical evidence on August 21, 2001 and found that appellant had a 9 percent impairment of the right upper extremity due to a 25 percent impairment of the median and interosseous nerves due to loss of strength. The district medical adviser did not address appellant's surgical procedure in his August 21, 2001 report.

These reports are not sufficient to establish appellant's permanent impairment under the Act. Dr. Savoie did not fully address the degree of appellant's weakness in the median and interosseous nerves. He noted that appellant had a "little" weakness due to these affected nerves, but did not indicate that he had applied the appropriate section of the A.M.A., *Guides*, to determine the grade of the loss of strength or that he had multiplied this percentage by the applicable value of the affected nerve.⁴ In his August 21, 2001 report, the district medical adviser extrapolated that a "little" weakness of the median nerve was a Grade 4 weakness of each of the affected nerves, under the fourth edition revised of the A.M.A., *Guides*. As the district

¹ The Office initially denied this request on January 18, 2002 on the grounds that appellant had previously refused suitable work.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ See A.M.A., *Guides*, 484, Table 16-11, 492, Table 16-15.

medical adviser did not base his conclusions on explicit physical findings as described in Dr. Savoie's April 20, 2000 report and did not apply the appropriate edition of the A.M.A., *Guides*, these reports are of reduced probative value to determine appellant's permanent impairment for schedule award purposes.

Dr. Savoie reviewed the August 21, 2001 report of the district medical adviser on October 2, 2001 and stated that appellant was entitled to a 10 percent impairment due to her carpal tunnel syndrome resulting in mild damage to the median nerve,⁵ 10 percent impairment due to damage to the radial nerve⁶ and 10 percent impairment due to excision of the distal clavicle for a total of 30 percent impairment to the upper extremity.⁷ Dr. Savoie's report merely restated his previous conclusions without additional medical findings or correlation with the specific provisions of the A.M.A., *Guides*, does not substantially add to the probative value of his findings and remains insufficient to establish appellant's permanent impairment for schedule award purposes.

The Office referred appellant for a second opinion evaluation with Dr. Wallace W. Weatherly, a Board-certified orthopedic surgeon, on February 19, 2002. In his March 22, 2002 report, Dr. Weatherly noted appellant's history of injury and performed a physical examination. He described appellant's surgeries as open lateral epicondylectomy and repair of extensor tendon and release of posterior interosseous nerve on the right elbow as well as arthroscopic decompression and excision of distal clavicle of her right shoulder in addition to multiple carpal tunnel releases. Dr. Weatherly found that appellant had basilar joint arthritis in her thumb, tenderness over the right lateral epicondyle and minimal shoulder pain. He found that appellant had shoulder range of motion including abduction of 160 degrees, internal rotation of 70 degrees, and external rotation of 80 degrees. Dr. Weatherly found good strength bilaterally. He stated that appellant had subjective complaints of residual problems in her hands, mainly pain and stiffness, but no objective findings of loss of motion or grip strength. Dr. Weatherly noted that appellant had tenderness and recurrent lateral epicondylitis of the right elbow as well as "a little pain with adduction and tenderness over the acromial joint on the right shoulder." He concluded that appellant had no loss of range of motion or motor deficits and awarded three percent impairment each for pain in the wrist, elbow and shoulder for a total of nine percent permanent impairment of the upper extremity citing the A.M.A., *Guides*.

The A.M.A., *Guides* provide for impairment ratings due to sensory deficits or pain resulting from peripheral nerve disorders.⁸ However, Dr. Weatherly did not provide specific findings supporting his conclusion that appellant was entitled to a schedule award due to pain. He did not identify the specific nerve involved at appellant's wrist, elbow and shoulder and did not explain the degree of pain based on the grading system provided by the A.M.A., *Guides*.

⁵ *Id.* at 495.

⁶ *Id.* at 484, Table 16-11, 492, Table 16-15.

⁷ *Id.*

⁸ *Id.* at 482, Table 16-10, 492, Table 16-15.

The district medical adviser reviewed the medical evidence on January 24, 2003 and concluded that Dr. Weatherly's examination and report did not justify an impairment of the upper extremity due to pain in the shoulder, wrist and elbow. He found that excision of the outer end of the right clavicle was a 10 percent impairment under the A.M.A., *Guides*.⁹ On January 31, 2003 the Office issued appellant a schedule award for a 10 percent permanent loss of use of her right arm.

Appellant's attending physician, Dr. Savoie, a Board-certified orthopedic surgeon, examined appellant, found she had reached maximum medical improvement and concluded that she had a 10 percent impairment of the median nerve as well as a 10 percent impairment of the radial nerve due to loss of strength in addition to the diagnosis-based estimate accepted by the Office. The second opinion physician, Dr. Weatherly, a Board-certified orthopedic surgeon, examined appellant, concluded that she had reached maximum medical improvement and found that she had no loss of strength, but that she had right upper extremity impairment due to pain of nine percent in addition to the diagnosis-based estimate. Although neither of the physician's reports are sufficient to establish appellant's impairment rating beyond the 10 percent awarded by the Office as neither physician based their respective impairment ratings on detailed physical findings and correlation with the A.M.A., *Guides*, proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter. In a case where the Office "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."¹⁰ In this case, the Office proceeded to develop the evidence and procured a second opinion examination with Dr. Weatherly. While Dr. Weatherly's March 22, 2002 report is not sufficiently detailed to establish appellant's entitlement to a schedule award due to additional permanent impairments, both the March 22, 2002 report as well as the April 20, 2000 and October 2, 2001 reports of appellant's attending physician, Dr. Savoie, suggest that appellant's permanent impairment due to her accepted employment-related conditions exceeds 10 percent. For these reasons, the Office should proceed to develop the medical evidence to determine the degree and extent of appellant's permanent impairment due to her accepted employment-related conditions. After such development as the Office deems necessary, the Office should issue an appropriate decision.

⁹ *Id.* at 506, Table 16-27.

¹⁰ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

The January 31, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for additional development consistent with this opinion of the Board.

Dated, Washington, DC
February 13, 2004

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member