

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN J. COOPER and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 03-2221; Submitted on the Record;
Issued January 23, 2004*

DECISION and ORDER

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

The issue is whether appellant has more than a 22 percent impairment to her left upper extremity for which she received a schedule award.

On July 18, 2001 appellant, then a 73-year-old distribution clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she injured her left elbow while in the performance of her federal duties. On July 19, 2002 appellant underwent arthrotomic surgery on her left elbow. In an August 21, 2002 decision, the Office of Workers' Compensation Programs accepted appellant's claim for Type III left radial head fracture and approved the surgery. Appellant returned to restricted-duty work on September 6, 2002.

On July 11, 2003 appellant applied for a schedule award. In support of her application, appellant submitted a report from Dr. Michael Forutan, an attending physician and orthopedic surgeon. In his May 19, 2003 report, Dr. Forutan wrote that appellant had good neurological function in her left upper extremity. Comparing her grip strength, he found her left was four degrees weaker than her right. Regarding appellant's wrist flexion, Dr. Forutan found them equal on both sides at 45 degrees, her extension was 20 degrees less on the left at 60 degrees, her radial deviation was 5 degrees less on the left at 25 degrees while her elbow circumference was 1 centimeter greater on the left.

Regarding appellant's elbow, Dr. Forutan found appellant's flexion was 140 degrees, her active extension was -5 degrees, with full pronation. He measured her supination at 78 degrees and gave an additional impairment function of the arm due to sensory deficit, pain or loss of strength at 40 percent. Dr. Forutan concluded that appellant had a 50 percent impairment rating of the left upper extremity with May 19, 2003 as the date of maximum medical improvement.

On July 28, 2003 the Office forwarded Dr. Forutan's report to Dr. James Bicos, an Office medical adviser, and asked that he apply the fifth edition of the American Medical Association,

Guides to the Evaluation of Permanent Impairment. In an August 6, 2003 report, Dr. Bicos made the following determination based on the fifth edition of the A.M.A., *Guides*:

“Elbow ROM [range of motion]: Flexion 140 degrees, 0 percent impairment (Figure 16-34, page 472); Extension -5 degrees, 1 percent impairment (Figure 16-34, page 472); Pronation full, 0 percent impairment (Figure 16-34, page 474); Supination 78 degrees, 0 percent impairment (Figure 16-34, page 474); Total: 1 percent impairment due to loss of ROM.

“Wrist ROM: Flexion 45 degrees, 2 percent impairment (Figure 16-28, page 467); Extension 60 degrees, 0 percent impairment (Figure 16-28, page 467); Ulnar deviation 15 degrees, 3 percent impairment (Figure 16-31, page 469); Radial deviation 25 degrees, 0 percent impairment (Figure 16-31, page 469); Total: 5 percent impairment due to loss of ROM.”

Dr. Bicos noted that appellant should also be awarded 17 percent left upper extremity impairment due to loss of grip strength in her left hand (Table 16-32, page 509) and 0 percent impairment for sensory deficits. Using the Combined Values Chart, (page 604 of the A.M.A., *Guides*, Dr. Bicos awarded appellant a 22 percent permanent impairment with May 19, 2003 as the date of maximum medical improvement.

In an August 22, 2003 decision, the Office awarded appellant a schedule award based on a 22 percent impairment of her left upper extremity.

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

The schedule award provisions of the Federal Employees’ Compensation Act¹ and its implementing regulation² 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

Physical examination of appellant by Dr. Forutan revealed losses of range of motion of both appellant’s elbow and wrist. Dr. Forutan and Dr. Bicos, the Office medical adviser, allowed additional impairment for loss of grip strength. However, this does not conform with the A.M.A., *Guides*. In the discussion of strength evaluation at section 16.8, (page 508) the A.M.A., *Guides* note that in a rare case loss of strength can be assessed by using loss of grip strength. However, the A.M.A., *Guides* state: “Decreased strength cannot be rated in the presence of decreased motion ... that prevent effective application of maximal force in the region being

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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

evaluated.”⁴ In this case, the physical finding on examination revealed decreased motion. The physicians did not address this finding with regard to the general prohibition found at section 16.8. As neither Dr. Forutan nor Dr. Bicos properly applied the A.M.A., *Guides*, the case will be remanded for further review.

The August 22, 2003 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded for further development consistent with this decision.

Dated, Washington, DC
January 23, 2004

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ See also FECA Bulletin No. 01-05 (issued January 29, 2001) at paragraph 4 that also incorporate this preclusion.