

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bedford Park, IL, Employer**

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**Docket No. 07-707  
Issued: August 7, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 31, 2006 merit decision and May 23, 2006 schedule award decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than 12 percent impairment to the right upper extremity and a 12 percent permanent impairment to the left upper extremity.

**FACTUAL HISTORY**

Appellant, a 44-year-old clerk, filed a claim for a bilateral carpal tunnel condition causally related to employment factors. The Office accepted the claim for bilateral carpal tunnel syndrome.

The Office medical adviser noted that appellant underwent carpal tunnel release surgery on May 9 and June 19, 2001. The procedures were performed by Dr. Joseph A. Franco, Board-certified in orthopedic medicine.

In a report dated February 17, 2004, Dr. Michael S. Bednar, Board-certified in orthopedic medicine, stated:

“Today on examination [appellant] has a full range-of-motion of her elbow, forearm, wrist and fingers. She has a negative Tinel’s sign over the median nerves bilaterally. With Phalen’s maneuver at approximately 30 seconds she complains of pain at the wrist on the right side and 45 second similar symptoms on the left side. She does not complain of any numbness or tingling into her fingers. Abductor pollicis brevis strength appears to be 5/5 bilaterally. Neurovascular examination appears within normal limits. There is no evidence of tendonitis present in either wrist. No evidence of carpal instability is seen.”

On July 23, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left and right upper extremities.

In a September 22, 2004 report, Dr. Daniel G. Torres, a specialist in rheumatology, found that appellant had severe pain in her wrists and forearms and paresthesia in both hands, causally related to her work-related bilateral carpal tunnel syndrome. He advised that she had reached maximum medical improvement.

In a report dated April 1, 2005, an Office medical adviser found that appellant had a 12 percent right upper extremity impairment and a 12 percent left upper extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* fifth edition. The Office medical adviser noted that the medical evidence of record, as manifested by Drs. Bednar, Franco and Dr. Scott Yen, Board-certified in orthopedic surgery, indicated that appellant experienced pain and sensory deficit due to her work-related bilateral carpal tunnel condition.<sup>1</sup> Relying on Table 16-10, page 482 and Table 16-15, page 492 of the A.M.A., *Guides*, the Office medical adviser rated Grade 3 impairment for sensory deficit/pain in the distribution of the median nerve to the thumb and index finger on the right, based on a 30 percent deficit out of a maximum 39 percent.<sup>2</sup> He noted that strength was normal and range of motion was normal. The Office medical adviser found that appellant reached maximum medical improvement on March 1, 2002, the date he returned to full duty.

In a report dated June 28, 2005, Dr. Yen, a Board-certified in orthopedic surgeon, stated that appellant had severe pain in her forearms and paresthesia in both hands, caused by her work-related bilateral carpal tunnel syndrome. He advised that she had distribution in the median nerve and could perform activities; however, appellant became fatigued early due to pain and numbness. Dr. Yen noted that she registered 40 degrees of dorsiflexion in both the left and right wrists, as opposed to a normal range of motion of 60 degrees. He stated that appellant had some atrophy of the thenar muscles, with good strength. However, due to pain and persistent

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<sup>1</sup> The Board notes that the Office medical adviser stated that one of the reports he relied upon was from Dr. Franco, the physician who performed appellant’s carpal tunnel release procedures. Dr. Franco did not submit a report containing an impairment evaluation. The Office medical adviser apparently was referring to Dr. Torres.

<sup>2</sup> The Office medical adviser did not cite a specific physician or indicate the specific source for the findings upon which he relied.

numbness appellant tired easily. Dr. Yen advised that both sides were affected equally, 50 to 75 percent of normal.<sup>3</sup>

On May 23, 2006 the Office granted appellant a schedule award for a 12 percent impairment of his right upper extremity and a 12 percent impairment of her left extremity, covering the period April 16, 2004 to September 22, 2005, for a total of 74.88 weeks of compensation.

On September 6, 2006 appellant requested reconsideration. In a report dated September 27, 2006, Dr. Yen found that she had an additional 30 percent impairment of the left wrist due to atrophy, for a total 40 percent impairment of the left upper extremity and an additional 50 percent impairment of the right wrist due to atrophy, for a total 60 percent impairment of the right upper extremity. He also found that appellant reached maximum medical improvement in 2005.

In an October 26, 2006 report, the Office medical adviser found that appellant was not entitled to any additional impairment for her left and right upper extremities.

By decision dated October 31, 2006, the Office denied modification of the May 23, 2006 schedule award decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>5</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.<sup>6</sup>

### **ANALYSIS**

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

The Office medical adviser found in his April 1, 2005 report that appellant had a 12 percent impairment of her right upper extremity and a 12 percent impairment of her left extremity based on the reports of Drs. Bednar, Torres and Yen. He stated that appellant had a

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<sup>3</sup> In this report, Dr. Yen initialed his concurrence on a copy of Dr. Torres' September 22, 2004 report; he also supplemented Dr. Torres' findings in this report with his own, handwritten annotations.

<sup>4</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>5</sup> 5 U.S.C. § 8107(c)(19).

<sup>6</sup> 20 C.F.R. § 10.404.

Grade 3 sensory deficit in the distribution of the median nerve to the thumb and index finger on the right, based on a 30 percent deficit out of a maximum 39 percent pursuant to Tables 16-10 and 16-15 of the A.M.A., *Guides*. However, the Office medical adviser failed to specify the methods by which he calculated a 12 percent bilateral upper extremity rating. He did not examine appellant and derived his 12 percent impairment ratings without indicating the source of the measurements he relied on. The Office medical adviser stated that he calculated 12 percent impairment based on a 30 percent strength deficit, which is ratable for a Grade 3 sensory deficit at Table 16-10. The Board notes that, while a Grade 3 sensory deficit at Table 16-10 yields a sensory deficit of 26 to 60 percent, the Office medical adviser does not provide any explanation of how he used this calculation, in conjunction with Table 16-15, to render a 12 percent impairment rating.<sup>7</sup> The Office medical adviser also failed to indicate which sections of Table 16-15 he relied on in calculating a 12 percent impairment rating in the right and left upper extremities in the distribution of the median nerve to the thumb and index finger, right side. The Office, therefore, erred in finding that appellant had a 12 percent impairment of the right and left upper extremities based on the opinion of the Office medical adviser.

### CONCLUSION

The Board finds that the case is not in posture for decision with regard to an impairment based on the left and right upper extremities and the case is remanded for further development. After such development as it deems necessary, the Office shall issue a *de novo* decision.

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<sup>7</sup> Table 16-15 provides a method for determining upper extremity impairments due to unilateral sensory or motor deficits or to combined 100 percent deficits of the major peripheral nerves. A.M.A., *Guides* at 492.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2006 decision is set aside and the case is remanded to the Office of Workers' Compensation Programs for further action consistent with this decision of the Board.

Issued: August 7, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board