

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. GURECKI and U.S. POSTAL SERVICE,
POST OFFICE, Pitman, N.J.

*Docket No. 96-1374; Submitted on the Record;
Issued April 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 10 percent permanent loss of use of the right arm and whether he has any permanent loss of use of his left leg.

The Office of Workers' Compensation Programs accepted that appellant's bilateral carpal tunnel syndrome and the surgeries he underwent for this condition¹ were causally related to factors of his employment as a letter carrier. On January 19, 1994 he filed a claim for a schedule award. Appellant submitted a report dated December 20, 1993 from Dr. David Weiss, an osteopath, who concluded that he had a 20 percent permanent impairment of each arm due to median nerve entrapment at the wrists. An Office medical adviser reviewed the medical evidence on February 27 and March 24, 1995 and concluded that appellant had a 10 percent permanent impairment of the right arm due to median nerve entrapment at the wrist and no permanent impairment of the left arm.

By decision dated April 4, 1995, the Office issued appellant a schedule award for a 10 percent permanent loss of use of the right arm and found that appellant had no permanent impairment of the left arm. This decision was affirmed by an Office hearing representative on January 10, 1996.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be

¹ Appellant underwent carpal tunnel decompressions and flexor tenosynovectomies on both hands and wrists: on the left on July 14, 1992, and on the right on October 1, 1992.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

The Board finds that there is a conflict of medical opinion, necessitating referral to an impartial medical specialist pursuant to section 8123(a) of the Act.⁵

As noted above, Dr. Weiss, appellant's attending physician, concluded that appellant had a 20 percent permanent impairment of both arms, while an Office medical adviser concluded that appellant had a 10 percent permanent impairment of the right arm and no permanent impairment of the left arm. Both physicians used the same table from the A.M.A., *Guides*, namely Table 16 of Chapter 3, titled "Upper Extremity Impairment Due to Entrapment Neuropathy" in rating the entrapment of appellant's median nerve at the wrist. Use of this table involves an estimate of the degree of severity of the entrapment. Dr. Weiss' estimate of a 20 percent impairment indicates a moderate degree of severity; the Office medical adviser's estimate of a 10 percent impairment for the right arm indicates a mild degree of severity.

The Office medical adviser indicated that he relied primarily on a September 9, 1993 report of Dr. Donald A. Barone, an osteopath, regarding nerve conduction studies and electromyography done that day. Dr. Barone stated that these studies "provide evidence of a very mild, right carpal tunnel syndrome" on the right and evidence that the "left carpal tunnel syndrome has normalized." Dr. Weiss stated in his December 20, 1993 report that he had reviewed Dr. Barone's September 9, 1993 report, but Dr. Weiss nonetheless concluded, based on his findings on examination and on appellant's complaints,⁶ that appellant had a 20 percent permanent impairment of both arms. There is a conflict of medical opinion.

⁴ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁵ 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

⁶ The example for entrapment neuropathy in the A.M.A., *Guides* uses subjective symptoms as the basis for rating such an entrapment, thereby indicating that this a proper basis.

The decisions of the Office of Workers' Compensation Programs dated January 10, 1996 and April 4, 1995 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
April 3, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member