U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARNOLD F. ZAFFOS and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, N.J.

*Docket No. 96-1470; Submitted on the Record;*
*Issued April 20, 1998*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he had more than a 10 percent permanent impairment of both wrists for which he received a schedule award.

On May 27, 1992 appellant, then a 38-year-old mailhandler, filed an occupational disease claim, alleging bilateral carpal tunnel syndrome which arose April 12, 1992. On August 20, 1992 the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of bilateral carpal tunnel syndrome. The Office approved carpal tunnel release surgery on the right and left wrists on August 20 and October 23, 1992, respectively. On August 17, 1994 appellant filed a claim for a schedule award. On April 15, 1995 appellant received a schedule award for a 10 percent permanent impairment of his right upper extremity and a 10 percent permanent impairment of left upper extremity for 62 weeks of compensation covering the period of May 12, 1994 to July 22, 1995. By merit decision dated January 19, 1996, an Office hearing representative affirmed the Office's April 15, 1995 schedule award decision.

The Board finds that the case is not in posture for decision regarding whether appellant has more than a 10 percent permanent impairment of his right wrist, for which he received a schedule award. With regard to the left wrist, the Board finds that the medical evidence does not establish greater than a 10 percent impairment, for which appellant received a schedule award.

Section 8107 of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 determined. For consistent results and to ensure equal justice under the law to all claimants,

[1] 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.304.

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* (4th ed. 1993) (A.M.A., *Guides*) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.[3]

The Office based its schedule award on a March 17, 1995 evaluation in which an Office medical adviser applied the standards of the fourth edition of the A.M.A., *Guides* to the findings of Drs. David Weiss and Joseph T. Barmakian, both Board-certified orthopedic surgeons. The Office medical adviser indicated that appellant's impairment was comprised of a 10 percent permanent impairment of the right upper extremity due to mild right median nerve neuropathy and a 10 percent permanent impairment of the left upper extremity due to mild left median nerve neuropathy, as derived from Table 16 on page 57 of the A.M.A., *Guides.* However, Dr. Weiss indicated in his June 29, 1994 report that appellant had a 20 percent permanent impairment of his right wrist and a 10 percent permanent impairment of his left wrist based on the same table, Table 16, identified by the Office medical adviser in rendering his conclusions. The Board notes that the 10 percent permanent impairment rating for the left upper extremity is unchallenged. However, the Office medical adviser and appellant's treating physician reached different conclusions as to the degree of disability with respect to the right upper extremity. While an Office medical adviser's opinion may constitute the weight of the medical evidence where an attending physician has provided a description of physical findings, but the percentage estimate is not in accordance with the A.M.A., *Guides*, it must be sufficiently detailed to be accorded such weight.[4] In the instant case, the Office medical adviser and Dr. Weiss provided differing assessments of the degree of permanent impairment to the right upper extremity. Thus, there are opposing medical reports of virtually equal weight in the record. Section 8123 of the Act[5] provides that if there is a disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination[6] and in accordance with the Office procedure manual, the opinion of an Office medical adviser can create a conflict in situations involving the review of an impairment assessment for a schedule award.[7] Inasmuch as the Office relied on the opinion of the Office medical adviser to grant the schedule award for the right upper extremity without resolving the conflict between the opinions of the Office medial adviser and that of Dr. Weiss, the Board finds that the case is not in posture for decision. Therefore, the case must be remanded for further evidentiary development to resolve the conflicting medical evidence. After such development of the case record as the Office deems necessary, a *de novo* decision on the schedule award for the upper right extremity shall be issued.

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[3] *Quincy E. Malone*, 31 ECAB 846 (1980).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(g) and (h) (April 1993).

[5] 5. U.S.C. § 8123(a)

[6] *Shirley L. Steib*, 46 ECAB 309 (1994).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(g) and (h) )(April 1993).

The decision of the Office of Workers' Compensation Programs dated January 19, 1996 is set aside and the decision dated April 15, 1995 is affirmed with respect to the schedule award for the left upper extremity and set aside with respect to the right upper extremity. The case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 20, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member