

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE E. BENAVIDEZ and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, Ariz.

*Docket No. 96-617; Submitted on the Record;
Issued February 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 14 percent permanent impairment of her right and left upper extremities for which she received a schedule award.

Appellant filed an occupational disease claim on April 19, 1992, which the Office of Workers' Compensation Programs accepted for bilateral extensor tendinitis. The Office authorized a September 9, 1993 extensor repair release of the left arm and authorized an April 26, 1994 repair of the extensor tendon of the right elbow.

In a report dated August 5, 1994, Dr. Michael Steingard, an osteopath and appellant's attending physician, found that appellant's right and left elbow conditions were stationary and released her for light-duty employment.

Appellant returned to light-duty employment on August 23, 1994.

By letter dated September 20, 1994, the Office requested that Dr. Steingard evaluate appellant to determine the extent of any permanent impairment of both arms due the her accepted employment injury. The Office informed Dr. Steingard that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) was the standard used for reaching an impairment rating.

In a report dated September 27, 1994, Dr. Steingard related the following range of motion findings for both appellant's right and left arm: 150 degrees of flexion, 0 degrees extension, 90 degrees pronation, 90 degrees supination and no ankyloses of the joints. Dr. Steingard related that appellant had "stiffness, soreness [and an] achy sensation with repetitious movements, twinges of pain on occasion [and a] pinched nerve in [her] right elbow." Dr. Steingard further found that appellant had some weakness in her upper extremities. Dr. Steingard indicated that appellant had reached maximum medical improvement on August 15, 1994 for the right side and

on March 2, 1994 for the left side. Dr. Steingard concluded that appellant had a 15 percent impairment of both upper extremities.

In a report dated November 15, 1994, an Office medical adviser reviewed the evidence of record and found that appellant had pain which prevented certain activities and thus graded her pain at 80 percent according to Table 11 on page 48 of the A.M.A., *Guides*. The Office medical adviser found that the maximum impairment due to pain of the affected nerve, the radial nerve, was 5 percent,¹ which when multiplied by the 80 percent for graded pain yielded a 4 percent impairment of each upper extremity due to pain. The physician graded appellant's muscle weakness at 25 percent.² The Office medical adviser found that the maximum impairment of the radial nerve due to muscle weakness was 42 percent³ which when multiplied by 25 percent yielded a 10 percent impairment of both upper extremities due to muscle weakness. He further found that appellant had no impairment due to loss of range of motion. The Office medical adviser combined the 10 percent impairment due to weakness with the 4 percent impairment due to pain to reach a total impairment rating of 14 percent of both upper extremities.

By decision dated December 9, 1994, the Office granted appellant a schedule award for a 14 percent permanent impairment of both the right and left upper extremity. The period of the award ran for 87.36 weeks from September 28, 1994 to May 31, 1996.

By letter dated January 9, 1995, appellant requested a hearing before an Office hearing representative.

Appellant submitted reports from Dr. Steingard dated January 4, 1994 and February 27, 1995 in which he discussed appellant's progress.

By decision dated September 19, 1995, the Office hearing representative affirmed the Office's December 9, 1994 decision.

The Board finds that appellant has no more than a 14 percent permanent impairment of both upper extremities for which she received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act⁴ and section 10.304 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

¹ A.M.A., *Guides* 54, Table 15.

² *Id.* 49, Table 12.

³ *Id.* 54, Table 15.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

In a report dated September 27, 1994, Dr. Steingard, an osteopath and appellant's attending physician, concluded that appellant had a 15 percent permanent impairment of both upper extremities. Dr. Steingard, however, did not specifically refer to the A.M.A., *Guides* in discussing his findings or reaching his impairment ratings. The Office medical adviser, on the other hand, applied Dr. Steingard's clinical findings to the appropriate tables and pages of the A.M.A., *Guides*.

The Office medical adviser determined that appellant had no impairment due to loss of range of motion but had an impairment due to pain and loss of strength in both upper extremities. The Office medical adviser found that the maximum impairment for pain of the affected nerve, the radial nerve, was 5 percent⁷ and that appellant had pain which he classified as 80 percent in accordance with the grading scheme of the A.M.A., *Guides*.⁸ The physician then multiplied the 5 percent impairment of the radial nerve due to pain by the 80 percent for graded pain which yielded a 4 percent impairment of each upper extremity. The Office medical adviser then found that the maximum impairment of the radial nerve due to muscle weakness was 42 percent.⁹ He graded appellant's muscle weakness as 25 percent,¹⁰ which he multiplied by the 42 percent impairment of the radial nerve due to weakness to reach a 10 percent impairment of both upper extremities. The Office medical adviser combined the 10 percent impairment due to weakness with the 4 percent impairment due to pain which yielded a total impairment of 14 percent of both upper extremities.¹¹

Accordingly, the Board finds that the weight of the medical evidence, based on the impairment determination of the Office medical adviser, establishes that appellant has no more than a 14 percent impairment of her upper extremities.

⁶ *James J. Hjort*, 45 ECAB 595 (1994).

⁷ *Id.* 54, Table 15.

⁸ *Id.* 48, Table 11.

⁹ *Id.* 54, Table 15.

¹⁰ *Id.* 49, Table 12.

¹¹ *Id.* 51, 322.

The decision of the Office of Workers' Compensation Programs dated September 19, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 25, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member