

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIA GUTIERREZ and DEPARTMENT OF DEFENSE,  
DEFENSE INVESTIGATIVE SERVICE, Long Beach, Calif.

*Docket No. 96-1427; Submitted on the Record;  
Issued June 8, 1998*

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DECISION and ORDER

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

The issue is whether appellant has more than a 29 percent impairment of both the right and left arms for which she received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome as a result of her federal employment and authorized multiple surgeries.

By letter dated February 2, 1994, the Office requested that Dr. Matthew Lin, a Board-certified orthopedic surgeon and appellant's attending physician, evaluate the extent of her permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993). The Office provided Dr. Lin with forms to complete.

In a report dated October 28, 1994, Dr. Lin found that appellant reached maximum medical improvement on October 28, 1994. Dr. Lin provided detailed range of motion findings for appellant right and left wrists, thumbs, and fingers. He further provided an impairment rating due to pain and loss of grip strength.

In a report dated December 20, 1994, an Office medical consultant reviewed Dr. Lin's October 28, 1994 report, reached impairment determinations regarding the range of motion findings, and opined that he was unable to reach a final impairment determination because it was unclear what unit of measurement Dr. Lin utilized in reaching his grip strength findings.

By letter dated January 25, 1995, the Office requested that Dr. Lin provide an estimate of appellant's loss of grip strength.

In a report dated February 27, 1995, Dr. Lin diagnosed tenosynovitis status post bilateral carpal tunnel release and found that appellant required a right trigger thumb release. He further

opined that appellant had lost more than 50 percent of her grip strength on both the right and left sides.

By letter dated March 2, 1995, the Office informed appellant that she was not eligible for a schedule award at the present time as her physician indicated that her condition was not yet permanent and stationary.

In a report dated May 19, 1995, Dr. Lin stated that appellant's right thumb condition had improved and that she had reached maximum medical improvement. On physical examination, Dr. Lin found that appellant had a full range of motion in her fingers and wrists with no further clicking in her thumbs. He stated that appellant had a "[s]light degree of pain with increased use of both hands for typing or gripping. The pain becomes slight to moderate with prolonged typing and use." He found that appellant's grip strength on the right was 23/25/25 pounds and on the left was 25/22/24 pounds, for a 50 percent loss of grip strength bilaterally.<sup>1</sup>

In a report dated October 16, 1995, an Office medical consultant applied the applicable sections and tables of the A.M.A., *Guides* to Dr. Lin's February 27, 1995 and May 19, 1995 reports. The Office medical consultant noted that Dr. Lin found that appellant had a normal range of motion of both wrists and the fingers of both hands but had continued pain and a loss of grip strength. The Office medical consultant found that, according to Table 34 on page 65 of the A.M.A., *Guides*, a 50 percent loss of grip strength of both hands equaled a 20 percent impairment of both arms. He then found that the maximum loss for pain in the median sensory nerve was 38 percent<sup>2</sup> which when multiplied by 30 percent for pain as provided in the grading scheme of the A.M.A., *Guides*, constituted a 11 percent impairment of each arm.<sup>3</sup> The Office medical consultant combined the 20 percent impairment due to loss of grip strength with the 11 percent impairment due to pain using the combined values chart in determining that appellant had a 29 percent impairment of both arms.<sup>4</sup>

By decision dated November 28, 1995, the Office issued appellant a schedule award for a 29 percent impairment of the right and left arms. The period of the award ran for 180.96 weeks from May 19, 1995 to November 5, 1998.

The Board finds that appellant has no more than a 29 percent impairment of both the right and left arms for which she received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,<sup>5</sup> and section 10.304 of the implementing federal regulations,<sup>6</sup> schedule awards are payable for permanent impairment of

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<sup>1</sup> In a report dated July 21, 1995, Dr. Lin noted that appellant again complained of problems with her thumb. In a report dated August 18, 1995, Dr. Lin found that appellant's thumb condition had improved.

<sup>2</sup> A.M.A., *Guides* 54, Table 15.

<sup>3</sup> *Id.* 48, Table 11.

<sup>4</sup> *Id.* 66, 322.

<sup>5</sup> 5 U.S.C. § 8107.

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 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.<sup>7</sup>

In the present case Dr. Lin found that appellant had normal range of motion in her fingers and wrists but had pain with continued use of her hands. He further found that she had a 50 percent loss of grip strength. The Office medical consultant applied Dr. Lin's clinical findings to the appropriate tables and pages of the A.M.A., *Guides*.

The Office medical consultant determined that, according to table 34 on page 65 of the A.M.A., *Guides*, a 50 percent loss of grip strength of both hands equaled a 20 percent impairment of both arms. The Office medical consultant next found that mild to moderate pain with activity constituted a 30 percent impairment<sup>8</sup> which when multiplied by the 38 percent maximum impairment value of the affected member, the median sensory nerve,<sup>9</sup> constituted an 11 percent impairment of both arms due to pain. He then combined the 20 percent impairment due to loss of grip strength with the 11 percent impairment due to pain and concluded that appellant had a 29 percent permanent impairment of both arms.<sup>10</sup>

Accordingly, the Board finds that the weight of the medical evidence, based on the impairment determination of the Office medical consultant, establishes that appellant has no more than a 29 percent permanent impairment of both arms.

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<sup>6</sup> 20 C.F.R. § 10.304.

<sup>7</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>8</sup> A.M.A., *Guides* 48, Table 11.

<sup>9</sup> *Id.* 54, Table 15.

<sup>10</sup> *Id.* 66, 322.

The decision of the Office of Workers' Compensation Programs dated November 28, 1995 is hereby affirmed.

Dated, Washington, D.C.  
June 8, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member