

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS T. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, Ohio

*Docket No. 96-1784; Submitted on the Record;
Issued May 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has greater than a 30 percent permanent impairment of the right upper extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for a right ulnar neuropathy and surgery in May 1986. By decision dated July 20, 1989, the Office awarded appellant a schedule award for an 18 percent impairment to his right arm. By decision dated October 21, 1991, the Office awarded appellant a schedule award for an additional nine percent impairment to his right arm. By decision dated August 3, 1993, the Office awarded appellant an additional two percent permanent impairment to his right arm. On October 24, 1995 appellant filed a claim for an increase in his schedule award and submitted evidence to support his claim.

In a report dated August 28, 1995, Dr. Chester K. Robinson, a Board-certified family practitioner with a subspecialty in pediatrics, based on a physical examination, diagnosed chronic persistent right ulnar nerve neuropathy secondary to trauma "without appreciable change." He noted that appellant's right hand grip was weak due to poor function of the ulnar nerve and the finger spread versus force was weak for all digits of the right hand. Dr. Robinson stated that muscle wasting was evident in the hypothenar area of the right hand in the palmar and volar areas. He stated that appellant had a 40 percent disability and required lifting and repetitive motion restrictions. By letter dated October 31, 1995, the Office requested that the District medical adviser review Dr. Robinson's August 28, 1995 report and calculate the percentage of appellant's impairment to his right upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3rd ed. 1988).

In a report dated November 1, 1995, the District medical adviser made various calculations using the A.M.A., *Guides* (3rd ed. rev., 1990), but concluded that he did not have enough information to warrant any evaluation and recommended that appellant be sent to a hand surgeon for a disability evaluation. The Office referred appellant to Dr. Michael E. Ruff, a Board-certified orthopedic surgeon, for an evaluation and instructed him to use either the third edition or the third edition revised of the A.M.A., *Guides* in assessing the degree of appellant's impairment.

In a report dated January 31, 1996, Dr. Ruff considered appellant's personal history and performed a physical examination. He noted that there was evidence of a previous healed surgical incision centered over the medial aspect of the elbow. Dr. Ruff stated that palpation about the area of the scar and the area of the previous transposed ulnar nerve was not particularly uncomfortable. He also stated that the JayMar dynamometer study showed that the unaffected left hand had 100 pounds of grip strength as compared to his affected right hand which showed 40 pounds of grip strength. Dr. Ruff diagnosed chronic right ulnar nerve compression with secondary motor and sensory loss, incomplete. He concluded that, based on the A.M.A., *Guides*, appellant had a 30 percent impairment of the right upper extremity which the equivalent of an 18 percent permanent impairment. The Office then referred appellant to the District medical adviser instructing him to use the A.M.A., *Guides* (4th ed. 1994).

In a report dated March 14, 1996, the District medical adviser used the A.M.A., *Guides* (4th ed. 1994) and determined that appellant had a 30 percent permanent impairment to his upper right extremity based on Table 16, page 57. Part of that percentage included a 4 percent loss of the ulnar nerve and a 20 percent loss of grip strength. He calculated appellant's grip strength using Table 34, page 65.

By decision dated March 27, 1996, the Office awarded appellant an additional one percent permanent impairment to his right upper extremity. The Office therefore awarded appellant a total schedule award for a 30 percent permanent impairment to his right upper extremity.

The Board finds that appellant has no greater than a 30 percent impairment to his right upper extremity.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss, or loss of use, of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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.³

In his August 28, 1995 report, Dr. Robinson opined that appellant had a 40 percent disability to his upper right extremity and did not use the A.M.A., *Guides*. In his November 1, 1995 report, the District medical adviser found more information was required and the Office referred appellant to Dr. Ruff. The Board has held that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

any permanent impairment.⁴ Therefore, Dr. Robinson's report is entitled to less weight because he did not use the A.M.A., *Guides* and the District medical adviser found it did not contain pertinent information. In his January 31, 1996 report, Dr. Ruff opined that appellant had a 30 percent impairment of the right upper extremity which was the equivalent of an 18 percent permanent impairment. He stated that he used the A.M.A., *Guides* but did not specify which edition he used. His percentage rating of appellant's impairment to his upper right extremity, however, did not exceed 30 percent. In his March 14, 1996 report, the District medical adviser reviewed Dr. Robinson's findings and using the A.M.A., *Guides* (4th ed. 1994), determined that appellant had a 30 percent permanent impairment to his upper right extremity using Table 16, page 57 and Table 34, page 65. His calculation of the percentage of impairment of appellant's right upper extremity sufficiently conforms to the A.M.A., *Guides* (4th ed. 1994) and therefore constitutes the weight of the medical evidence.⁵

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 27, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 1, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁴ *Paul R. Evans*, 44 ECAB 646, 651 (1993).

⁵ Although the record contains reports by Dr. Michael D. Volsky, a family practitioner, dated May 13, 1989 and Dr. Raul A. De La Iglesia, a specialist in physical medicine and rehabilitation, dated November 7, 1992 in which the doctors assessed that appellant had a 40 percent permanent impairment to his upper right extremity, they did not use the A.M.A., *Guides* and therefore their opinions are of diminished probative value; see *Paul R. Evans*, 44 ECAB 646, 651 (1993).