

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. ADDISON and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 98-1544; Submitted on the Record;
Issued December 3, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a three percent permanent impairment of her right upper extremity, for which she received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim of tendinitis, carpal tunnel syndrome of the right upper extremity and carpal tunnel release on June 16, 1997. Appellant has not worked since June 16, 1997.

In a report dated February 5, 1998, appellant's treating physician, Dr. George T. Grace, a Board-certified plastic and general surgeon, stated that appellant's scar from her carpal tunnel release on June 16, 1997 was resolving. He stated that there were negative Tinel's and Phalen's signs but still a "a fair amount" of scarring. Dr. Grace stated that the pain and grips demonstrated at least a 10 percent weakness in terms of the pain in the right and left hand. He stated that sensation had returned to normal but appellant had "a little bit of pain" over the scar. Dr. Grace stated that he thought the pain over the scar would continue to improve and according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), appellant had a 3.5 percent impairment to the right hand.

In a copy of Dr. Grace's February 5, 1998 report received by the Office on March 10, 1998, the "3.5 percent" figure of appellant's impairment is crossed out and someone wrote "5 percent" to replace it.

In a report dated March 9, 1998, the district medical adviser stated that he reviewed Dr. Grace's February 5, 1998 report and considered his statements that the sensation was normal, there was weakness of 10 percent, the little bit of pain over the scar was expected to improve, there were negative Tinel's and Phalen's signs and the scar was resolving. He stated that using Table 15, page 54, of the A.M.A., *Guides* (4th ed. 1994), appellant had a 10 percent maximum upper extremity impairment due to motor deficit and, using Table 12a, page 49, had a grade of

loss of muscle strength at 25 percent. He multiplied 10 percent by 25 percent to obtain a 2.5 percent impairment of the right upper extremity.

By decision dated March 24, 1998, the Office awarded appellant a 3 percent permanent impairment to the right upper extremity from February 5 to April 11, 1998.

The Board finds that appellant has no greater than a 3 percent permanent impairment to the 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 February 5, 1998 report, while Dr. Grace stated that appellant had a 10 percent weakness in terms of the pain in the right and the left and stated that he used the A.M.A., *Guides* (4th ed. 1994), he did not specifically state how he used them to obtain his figure of a 3.5 percent impairment of appellant's right hand. Further, the fact that an anonymous change of the impairment rating on one copy of Dr. Grace's February 5, 1998 report was made from 3.5 to 5 percent renders the exact impairment rating he gave appellant unclear. Even assuming, however, that Dr. Grace meant to give appellant an five percent impairment rating, he did not explain how he obtained the five percent figure. His conclusion that appellant had a permanent impairment of 3.5 percent or 5 percent is therefore not probative because he did not explain how he obtained those figures pursuant to the A.M.A., *Guides*. The Board requires that a physician properly use the A.M.A., *Guides* in assessing an appellant's impairment.⁴

In his March 9, 1998 report, the district medical adviser explained how he obtained the figure of 2.5 percent representing appellant's impairment of the right upper extremity pursuant to the A.M.A., *Guides* (4th ed. 1994), and his use of the A.M.A., *Guides* was proper. He restated all of Dr. Grace's physical findings in his February 5, 1998 report, then used Table 15, page 54, to determine that appellant had a 10 percent maximum upper extremity impairment due to motor deficit and used Table 12a, page 49, to obtain a grade loss of muscle strength of 25 percent. In accordance with the A.M.A., *Guides*, he then multiplied 10 percent by 25 percent to obtain a

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).

⁴ *See Paul R. Evans*, 44 ECAB 646, 651; *see Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

2.5 percent impairment to the right upper extremity. Because Dr. Grace's opinion is not probative due to his unclear use of the A.M.A., *Guides* and there is some confusion over his impairment rating, whether he meant 3.5 or 5 percent, his opinion is not probative. The district medical adviser's use of the A.M.A., *Guides* in determining that appellant had a 2.5 percent impairment to her right upper extremity is proper. Appellant has therefore failed to present evidence to establish that she sustained more than a three percent impairment to her right upper extremity.

The decision of the Office of Workers' Compensation Programs dated March 24, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 3, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member