U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA W. HOETGER and U.S. POSTAL SERVICE,
POST OFFICE, Corte Madera, Calif.

Docket No. 97-192; Submitted on the Record;
Issued February 18, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly computed appellant's loss of wage-earning capacity based on her actual earnings; and (2) whether the Office properly calculated appellant's schedule award at six percent impairment of both her upper extremities.

Initially, the Board finds that the Office properly computed appellant's loss of wage-earning capacity based on her actual earnings effective September 17, 1993.

On July 7, 1987 appellant, then a 39-year-old distribution clerk, filed a notice of occupational disease alleging that she acquired de Quervain's disease as a result of repetitive movements of her wrist and thumb in the course of her federal employment. Appellant stopped working on July 7, 1987. The Office accepted the claim for de Quervain's syndrome and stenosing tenosynovitis and authorized payment of compensation benefits. Appellant returned to regular, full-time employment in October 1988. On February 18, 1993 appellant filed a notice of recurrence of disability alleging that on February 16, 1993 she sustained a recurrence of disability. Appellant stopped working on February 17, 1993. Appellant returned to work on February 22, 1993, but she no longer received premium time wages for night work and Sunday work. On August 26, 1993 the Office accepted the claim for a recurrence of bilateral de Quervain syndrome. On February 5, 1993 appellant accepted a limited-duty position as a distribution clerk at a salary of $35,604.00 per year.

By decision dated April 10, 1995, the Office found that the light-duty position of distribution clerk, which was effective February 17, 1993, fairly and reasonably represented appellant's wage-earning capacity. In calculating appellant's compensation rate, the Office

applied the formula established in the case of *Albert D. Shadrick*.[1] The Office applied the pay rate when disability began on July 7, 1987, $553.04 per week.

On April 29, 1995 appellant requested a hearing which was held on December 12, 1995.

By decision dated May 23, 1996, the Office hearing representative reversed the Office's April 10, 1995 decision awarding compensation at a rate of $8.30 per hour. The Office hearing representative found that the Office erred in utilizing the pay rate applicable when disability initially began on July 7, 1987 in applying the first step of the *Shadrick* compensation formula. The hearing representative found that appellant was entitled to the pay rate at the time of recurrence of disability in the application of the *Shadrick* formula because the recurrence occurred six months after appellant's return to regular full-time duty.

By decision dated July 8, 1996, the Office again found that the distribution clerk position fairly and reasonably represented appellant's wage-earning capacity. In determining appellant's compensation rate the Office again applied the *Shadrick* formula. Pursuant to the hearing representative's decision, the Office noted the pay rate when compensable disability recurred on February 17, 1993 of $698.62 per week. The Office then noted that the current pay rate for job and step when appellant was injured on February 17, 1993 of $664.29 per week. The Office then indicated that appellant had actual earnings of $652.92. The Office next calculated that appellant's wage-earning capacity was 98 percent because appellant's actual earnings of $652.92 per week were 98 percent of appellant's pay rate for job and step when injured of $664.29 per week. The Office then multiplied 98 percent times the pay rate when appellant's compensable injury recurred of $698.62 to find that appellant's wage-earning capacity was $684.64. The Office subtracted this $684.64 from the pay rate when compensable disability recurred on February 17, 1993 of $698.62 per week to find that appellant's loss of wage-earning capacity was $13.98 per week. It then multiplied this amount times the applicable compensation rate of 75 percent to determine that appellant was entitled to $10.49 in compensation per week or $45.00 per month.

The Board initially discussed the necessity for payment of compensation where an employee sustained a loss of wage-earning capacity, but has actual earnings in the case of *Albert D. Shadrick*.[2] *Shadrick* provides that appellant's wage-earning capacity shall be determined by actual earnings if such actual earnings fairly and reasonably represent appellant's wage-earning capacity.

The formula for determining loss of wage-earning capacity based on actual earnings, developed in the *Shadrick* decision, has been codified by regulation at 20 C.F.R. § 10.303(a) and recognizes the basic premise that an injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity.[3]

[1] 5 ECAB 376 (1953).

[2] *Id.*

[3] 20 C.F.R. § 10.303(a).

Section (b) of this regulation provides the formula to be utilized by the Office for computing compensation payable for partial disability.[4] First, the Office must determine appellant's "wage-earning capacity in terms of percentage" by dividing her earnings by the current, or updated, pay rate for the position held at the time of injury. In this case, the Office properly determined appellant's wage-earning capacity by dividing her actual earning of $652.92 by the current, or updated, pay rate for the job held at the date of injury on September 17, 1993, or $664.29, to arrive at a 98 percent wage-earning capacity.[5]

The Office properly proceeded with a consideration of appellant's "wage-earning capacity in terms of dollars" by applying section 8104(4) of the Federal Employees' Compensation Act to determine her "pay rate for compensation purposes." This requires a comparison of the highest pay rate by comparing the rate as of the date of injury, the date disability begins, or the date of recurrence if more than six months after returning to work.[6] In this case, appellant's highest rate of pay under section 8104(4) was $698.62 per week, the recurrence of disability pay rate appellant received when her compensable disability recurred on February 17, 1993. The Office hearing representative found this in his May 23, 1996 decision.

The Office computed appellant's "wage-earning capacity in terms of dollars" by multiplying the pay rate for compensation purposes, $698.62, by the percentage of wage-earning capacity, 98 percent, to equal $684.64 per week. This figure is subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity. The difference of $13.98 per week reflects appellant's loss of wage-earning capacity as of February 17, 1993. The Office then properly determined that appellant, with dependents, is entitled to three-fourths that amount, or $10.49.[7] The Board finds that the Office properly computed appellant's compensation based on her wage-earning capacity as of February 17, 1993.

The Board further finds that appellant has no more than a six percent impairment of each of her upper extremities.

On April 3, 1995 the Office requested that appellant's treating physician, Dr. Keith A. Denkler, Board-certified in plastic, reconstructive and hand surgery, determine the extent of permanent partial impairment of the wrists pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). On April 20, 1994 Dr. Denkler diagnosed bilateral de Quervain's tenosynovitis which was permanent and stable as of April 13, 1995. Dr. Denkler noted constant mild to severe pain in both upper extremities, especially in and around the first dorsal compartment which inhibits writing and lifting. He stated that dorsiflexion was 60 degrees for the left and 70 degrees for the right. Dr. Denkler noted that 60 degrees was normal. He indicated that palmar flexion was 60 degrees for the left

[4] 20 C.F.R. § 10.303(b).

[5] 20 C.F.R. § 10.303(b); *Bernard A. Newman*, 44 ECAB 759 (1993).

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900.2(b) (December 1995); *see also Fernando O. Valles*, 44 ECAB 776 (1993).

[7] *See* 5 U.S.C. 8106. The basic rate of compensation is set by statute at 66 and 2/3 percent for employees without dependents.

and 70 degrees for the right. Dr. Denkler noted that 70 degrees was normal and that appellant therefore lost 10 degrees on the left. He noted that radial deviation was 10 degrees for the left and right and that ulnar deviation was 10 degrees for the left and right. Dr. Denkler stated that radial deviation was normal at 20 degrees and that ulnar deviation was normal at 30 degrees. He stated that grip strength by Jamar #2 was 80/80 for left/right and that a normal grip would be 90/90 for left/right. Dr. Denkler stated that appellant could not do any repetitive motion of the hands for more than 5 to 10 minutes without experiencing severe symptoms and having to stop. Failure to stop the activity causes aching, pain and tingling which could last for weeks. He stated that there was a vice-like feeling of tingling in the middle portion of her wrists and at the top of her left hand. Dr. Denkler stated that appellant had difficulty pinching, writing and lifting against resistance. He opined that appellant had a 10 percent impairment pursuant to A.M.A., *Guides* guidelines.

The schedule award provision of the Act[8] and its implementing regulations,[9] set forth that 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 is to be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment.[10]

In obtaining medical evidence for schedule award purposes, the Office must obtain an evaluation by an attending physician which includes a detailed description of the impairment including, where applicable, the loss in degrees of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[11] If the attending physician has provided a detailed description of the impairment, but has not properly evaluated the impairment pursuant to the A.M.A., *Guides*, the Office may request that the Office medical adviser review the case record and determine the degree of appellant's impairment utilizing the description provided by the attending physician and the A.M.A., *Guides*.[12]

Following the receipt of Dr. Denkler's April 20, 1995 report, the Office requested that its medical adviser apply the A.M.A., *Guides* to the measurements of impairment provided by Dr. Denkler. The Office medical adviser thereafter evaluated appellant's impairment in a report dated August 7, 1996. The Office medical adviser stated that pursuant to the A.M.A., *Guides* (4th ed.) Dr. Denkler's findings of 10 degree radial deviation on both wrists resulted in a 2 percent impairment of each upper extremity pursuant to figure 29, page 38. Moreover, the

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.304.

[10] *Leisa D. Vassar*, 40 ECAB 1287 (1989).

[11] *Joseph D. Lee*, 42 ECAB 172 (1990).

[12] *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

medical adviser indicated that, based on Dr. Denkler's description of mild to severe pain coupled with appellant's inability to do repetitive motion without severe symptoms, appellant had a Grade 4 description of sensory deficit or pain pursuant to Table 11, page 48. In accordance with Table 11, page 48, he then multiplied the maximum percent of sensory deficit for the Grade 4 classification, of 80 percent, by the percentage of upper extremity impairment for a radial nerve, as described by Dr. Denkler, found at Table 15, page 54, of 5 percent, to determine that appellant's impairment due to sensory or pain deficit was 4 percent in each upper extremity. The medical adviser concluded that pursuant to the combined loss table of the A.M.A., *Guides*, the combined loss of a two percent impairment for loss of radial deviation and a four percent impairment due to sensory or pain deficit equaled a total impairment of both upper extremities of six percent.

As the Office medical adviser properly utilized the description of appellant's impairment provided by Dr. Denkler and the A.M.A., *Guides* to evaluate appellant's impairment and there is no other medical evidence of record that appellant has more than a six percent impairment of each upper extremity, the Office properly found that appellant has a six percent impairment of each upper extremity.

The decisions of the Office of Workers' Compensation Programs dated August 26, July 8 and May 23, 1996 are affirmed.

Dated, Washington, D.C.
February 18, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member