U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTA K. WILSON <u>and</u> U.S. POSTAL SERVICE,
POST OFFICE, Thousand Oaks, Calif.

Docket No. 97-52; Submitted on the Record;
Issued March 12, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a greater than 24 percent total impairment for loss of use of both upper extremities, for which she received a schedule award.

On December 6, 1989 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on November 29, 1989 she strained and pulled a muscle in her back while bending down to pick up a piece of mail. The Office of Workers' Compensation Programs accepted the claim for a left rotator tear on November 29, 1989.

On July 6, 1993 appellant filed notice of occupational disease and claim for compensation (Form CA-2) alleging that her carpal tunnel syndrome was causally related to her employment injury. On November 1, 1993 the Office accepted this claim by appellant for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release.

On September 20, 1994 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her ulnar neuropathy of both elbows was work related. On December 14, 1994 the Office accepted appellant's bilateral ulnar neuropathy as work related.

On September 13, 1995 appellant requested a schedule award.[1]

By letter dated September 21, 1995, the Office requested Dr. Lawrence Leventhal, appellant's treating Board-certified orthopedic surgeon, for an impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) and noted that the claim had been accepted for bilateral ulnar neuropathy.

In a report dated October 9, 1995, Dr. Leventhal noted on physical examination that appellant had "full range of motion of her joints of fingers, wrists and elbows," and she had "no gross neurological deficits noted in the upper extremities." He also indicated that appellant had "mild tenderness at the ulnar nerve at the elbow." Dr. Leventhal noted that appellant's results from a Jamar dynamometer were "right over left with the left hand dominant: 36:34, 34:36 35:35."

In a note dated March 8, 1996, the Office medical adviser noted that according to the A.M.A., *Guides* appellant had a "grip strength loss index of 29 percent" which equaled a 10 percent upper extremity impairment pursuant to Table 34, page 65. The Office medical adviser also noted that appellant had a two percent impairment due to sensory deficit or pain pursuant to Table 15, page 54 and Table 11, page 48. The Office medical adviser calculated that appellant had a total impairment of 12 percent for the right upper extremity and 12 percent for the left upper extremity.

On April 12, 1996 the Office granted appellant a schedule award for 24 percent permanent loss of use of both upper extremities. The period of the award was from March 31, 1996 to September 5, 1997.

On April 29, 1996 appellant, through her representative, requested reconsideration of the April 12, 1996 schedule award and that it be awarded in a lump sum. Appellant also argued that the Office failed to award her a schedule award for her right upper extremity.

On May 15 1996 the Office denied appellant's request for reconsideration of the April 12, 1996 schedule award as the evidence submitted by appellant in support of her application was irrelevant and immaterial to warrant review of its prior decision.

The Board finds that appellant is entitled to no more than a 24 percent total impairment for loss of use of both upper extremities, for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss

[1] In a letter dated September 1, 1995, appellant requested a schedule award and that the amount be given in a lump-sum payment.

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.304.

of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[4] However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[5]

Dr. Leventhal provided an October 9, 1995 medical report in which he opined that appellant had full range of motion of her upper extremities as well as "no gross neurological deficits." He provided objective results from a Jamar dynamometer. Dr. Leventhal described mild tenderness of the ulnar nerve at the elbow.

The Board finds that the March 8, 1996 report of the Office medical adviser properly applied the protocols and tables of the A.M.A., *Guides* in his calculation of the extent of permanent partial loss of use of appellant's right and left upper extremities due to sensory and pain deficit. As noted above, he utilized the applicable tables of the A.M.A., *Guides* to the sensory and motor loss noted in Dr. Leventhal's' clinical findings. Accordingly, the medical evidence of record does not establish that appellant has a greater than 24 percent impairment of both upper extremities found by the Office medical adviser.

[4] 5 U.S.C. § 8107(c)(19).

[5] *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

The decisions of the Office of Workers' Compensation Programs dated May 15 and April 12, 1996 are hereby affirmed.[6]

Dated, Washington, D.C.
March 12, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] Appellant argues that she her schedule award should have been granted in a lump sum as she requested. However, the record does not contain a final decision of the Office concerning this issue and, therefore, this matter is not currently before the Board; *see* 20 C.F.R. § 501.2(c).