U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KRISS DIMAS and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

Docket No. 97-1703; Submitted on the Record;
Issued March 22, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she has more than a 10 percent permanent impairment of the right upper extremity for which she has received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly determined the date of appellant's maximum medical improvement.

In the present case, the Office has accepted that appellant, a letter carrier, sustained a right hand injury on May 7, 1987 when she fell in the performance of her federal employment. Appellant's claim was accepted for aggravation of de Quervain's disease of the right hand. Appellant underwent a surgical release of the right radial nerve at the first dorsal compartment on July 14, 1988 and a second surgical procedure to the right wrist on September 5, 1991 for failed right dorsal compartment release. Appellant returned to work in 1992, working six hours a day and the Office determined that her actual earnings fairly and reasonably represented her wage-earning capacity. On December 10, 1996 the Office granted appellant a schedule award for 10 percent permanent impairment of the right upper extremity. On March 25, 1997 the Office denied modification of the schedule award, after merit review.

Section 8107 of the Federal Employees' Compensation Act[1] provides that, if there is a permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. For consistent results and to insure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[2]

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[1] 5 U.S.C. § 8107.

[2] *James J. Hjort*, 45 ECAB 595 (1994).

In a report dated July 29, 1996, appellant's treating physician, Dr. Samuel K. Tabet, a Board-certified orthopedic surgeon, reported that appellant continued to have weakness and pain with repetitive motion of the right hand. He noted that her grip strength was limited to 30 pounds on the right. Dr. Tabet stated that he had consulted the A.M.A., *Guides* and that based upon appellant's loss of sensation in the distal end of her thumb, loss of terminal extension of the thumb and weakness of grip strength, appellant had a nine percent upper extremity impairment. An Office medical adviser, Dr. H. Mobley, reviewed Dr. Tabet's report on October 30, 1996 and explained that pursuant to the fourth edition of the A.M.A., *Guides*, Table 16 page 57, appellant's mild entrapment neuropathy of the radial nerve would be rated as a 10 percent permanent impairment of the right upper extremity. The Office medical adviser also opined that July 29, 1996, the date of Dr. Tabet's examination was the date of maximum medical improvement.

As Dr. Tabet did not explain how he had utilized the A.M.A., *Guides* to rate appellant's impairment, the Office properly referred the record to an Office medical adviser for calculation of permanent impairment. The Board has reviewed Table 16 of the A.M.A., *Guides* and concurs with the Office medical adviser's finding that entrapment neuropathy at the wrist causing a mild impairment is rated as a 10 percent permanent impairment of the upper extremity. As Dr. Tabet reported that appellant had a 9 percent permanent impairment of the right upper extremity, there is no medical evidence of record to support a finding that appellant has more than a 10 percent permanent impairment of the right upper extremity.

The Board notes that on appeal appellant alleges that the Office improperly picked July 29, 1996 as the date of maximum medical improvement as she had reached maximum improvement years earlier. A schedule award is not payable until maximum improvement of the claimant's condition has been reached. The determination of the date of maximum medical improvement is factual in nature and depends primarily on the medical evidence.[3] While Dr. Tabet did comment in a report dated May 26, 1994, soon after he initially saw appellant, that appellant may have reached maximum medical improvement, such opinion was couched in speculative terms. Furthermore, Dr. Tabet did not evaluate appellant's permanent impairment at that time, therefore, it would be impossible to rate her impairment at that time, or to compare the degree of impairment to subsequent reports. Dr. Tabet continued to treat appellant in attempts to improve her accepted condition during the years and he attempted different treatments as late as May 1996. Dr. Tabet noted waxing and waning of symptomology at different times. The medical evidence of record as a whole therefore does not support a finding that appellant had reached maximum medical improvement prior to July 1996.

[3] *See Jerre R. Rinehart*, 45 ECAB 518 (1994).

The decision of the Office of Workers' Compensation Programs dated March 25, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 22, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member