U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN E. BASNAR and DEPARTMENT OF THE AIR FORCE, HANSCOM AIR FORCE BASE, MA

Docket No. 97-2349; Submitted on the Record;
Issued November 22, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 34 percent permanent impairment of her right upper extremity for which she received a schedule award.

On September 14, 1993 appellant, then a 37-year-old secretary, filed a claim for occupational disease alleging that she developed wrist and arm conditions as a result of her federal employment duties. On November 5, 1993 the Office of Workers' Compensation Programs accepted that appellant sustained left ulnar nerve entrapment and right carpal tunnel syndrome. The Office subsequently expanded its acceptance of appellant's claim to include left carpal tunnel syndrome and right radial nerve entrapment and authorized surgical treatment, including a right radial decompression procedure. In a decision dated September 12, 1994, the Office granted appellant a schedule award for 19 percent permanent impairment of her right upper extremity. Subsequently, appellant underwent authorized right radial decompression surgery and her claim was reevaluated to determine whether she was entitled to an increased schedule award. In a decision dated April 12, 1996, the Office granted appellant an award for an additional 12 percent permanent impairment for a total award of 31 percent. Appellant requested an oral hearing before an Office representative.

By decision dated December 1, 1996 and finalized on December 6, 1996, an Office hearing representative affirmed the 31 percent schedule award. The hearing representative specifically found that, although appellant's treating physician, Dr. Martin A. Kassan, stated in his report that he utilized the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, as the physician failed to identify any of the tables, figures or pages used in making his findings, his conclusion, expressed in his February 13 and March 8, 1996 reports, that appellant had a 34 percent impairment of her right upper extremity in addition to her previously granted 19 percent award, was of little probative value. Therefore, the hearing representative found that the weight of the medical evidence rested with the opinion of the Office medical adviser, who had applied Dr. Kassan's findings on physical examination to the appropriate portions of the A.M.A., *Guides*. The Board has given careful consideration to the

issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated December 1, 1996 and finalized on December 6, 1996, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

Following the hearing representative's decision, by letter dated February 3, 1997, appellant requested reconsideration of the prior decision. In support of her request, appellant submitted additional medical reports from Dr. Kassan. In a decision dated May 2, 1997, the Office determined that appellant sustained an additional three percent permanent impairment to her right upper extremity for a total award of 34 percent, rather than the 53 percent total award sought by appellant.

The Board finds that appellant has no more than a 34 percent permanent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.304 of the implementing federal regulations,[2] 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 shall be determined. For consistent results and to ensure equal justice for 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* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[3]

In the present case, in his narrative report dated January 27, 1997, Dr. Kassan, a plastic surgeon specializing in hand surgery, attempted to explain his earlier conclusions and further enclosed a copy of his February 13, 1996 report, which he had amended to reflect the tables, figures and page numbers of the A.M.A., *Guides* utilized in reaching his conclusions. With respect to the degree of impairment of appellant's right upper extremity, Dr. Kassan noted that several incorrect assumptions had been made by the Office and stated:

> "The first is that the only impairment that you have was secondary to the radial nerve entrapment and its release. The residual of that would in fact be 15 percent via an entrapment code. Therefore, the rating which was given for the radial cutaneous nerve sensation which was initially felt to be a five percent impairment of the upper extremity, should in actuality be a 15 percent impairment of the upper extremity.

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.304.

[3] *See James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

"With respect to the numbness on your forearm, this is innervated by the lateral antebrachial cutaneous nerve, one which comes off the musculocutaneous nerve. As such those figures are correct.[4]

"Despite the fact that the problem that you had was with respect to the radial nerve at the elbow level, the fact that you were splinted and in a sling produced problems at your right shoulder. This is a residual of the problem that was dealt with. As such any and all problems and limitations with respect to your shoulder are secondary to the process which transpired. Since these are not addressed in the entrapment code, they must be considered separately and as such the losses in range of motion with respect to the shoulder are appropriate.[5]

"With respect to the alterations in range of motion at the elbow, these may very well be considered part of the sequelae of the right radial nerve decompression. As such I would consider giving them back this two percent, without much of a fight.

"Previously I had given you a rating for your hand, from the wrist down, related to your carpal tunnel syndrome. This was an evaluation of the hand, both the median and ulna nerves, from the point of the wrist going distally. This rating does not in any way involve an evaluation of grip strength. Grip strength is obtained *via* the flexor muscles in the forearm, which are innervated by both the medial and ulna nerve above the wrist. Therefore, loss of grip strength would not be the sequelae of your prior carpal tunnel syndrome and its treatment. In addition, the radial nerve is not involved in innervating any of the flexor muscles which are involved in producing grip strength. The radial nerve innervates the extensors, and gives sensation to the back of the hand. As such it should have absolutely no influence on grip strength relative to the entrapment of the nerve and its subsequent residuum. As stated in the A.M.A., *Guides,* fourth edition, on page 64 under strength evaluation, it indicates that in a rare case, 'if the examiner believes the patient's loss of strength represents an impairing factor that has not been considered adequately, the loss of strength may be rated separately.' As such the

[4] In his revised report, Dr. Kassan indicated that the right musculocutaneous nerve sensation was 75 percent impaired and equated to a 4 percent impairment of the right upper extremity. He further found that the right palmar and/or dorsal ulnar and/or radial cutaneous nerve sensation was 60 percent impaired and impaired the hand by 10 percent.

[5] In his revised report, Dr. Kassan stated that loss of range of motion in appellant's right shoulder equated to a 12 percent impairment.

> strength rating was undertaken, utilizing grip strength with the Jaynar dynamometer in the second position and calculating the upper extremity impairment utilizing the formula on page 65 and table 34 on page 65."[6]

Utilizing the Combined Values Chart located on page 322 of the A.M.A., *Guides*, Dr. Kassan concluded that appellant had an additional 42 percent impairment, which when combined with her prior rating of 19 percent permanent impairment, equated to a total of 53 percent permanent impairment of the right upper extremity.

In a report dated April 20, 1997 and in a follow-up report dated May 1, 1997, the Office medical adviser reviewed Dr. Kassan's January 27, 1997 report and stated that while it was appropriate to use Table 16, page 57 to establish impairment from entrapment neuropathy, as Dr. Kassan had done, the use of Table 16 exclude the use of alternative methods, such as rating impairment based on pain, abnormal motion or weakness. The Office medical adviser further noted that Dr. Kassan did not explain why the flexor muscles below the elbow were affected with resultant weakness of grip strength. After reviewing Dr. Kassan's explanations, the Office medical adviser determined that appellant was entitled to an additional 3 percent permanent impairment for a total award of 34 percent.[7]

The Board has held that when an attending physician's report gives an estimate of permanent impairment but is not based on a proper application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.[8] The Board concludes that in the present case the Office medical adviser's application of the *Guides* most accurately reflects appellant's condition, as described by Dr. Kassan. As noted above, Dr. Kassan rated appellant's condition for pain, loss of motion and weakness, pursuant to Tables 34, 11 and 15 of the A.M.A., *Guides*, in addition to rating her condition pursuant to Table 16 of the *Guides*, for upper extremity impairment due to entrapment neuropathy. The A.M.A., *Guides* makes clear that impairment of the hand and upper extremity secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits as described in the A.M.A., *Guides*, or by using the diagnosis based method represented by Table 16, page 57 of the *Guides*, but both methods should not be used. In addition, while Dr. Kassan attempts to explain his additional impairment rating due to loss of grip strength, by pointing to an exception set forth in the A.M.A., *Guides*, he further states that his prior rating of appellant's hand did not include a rating for grip strength. A review of Dr. Kassan's prior report dated June 21, 1994, relied on in part in the Office's initial schedule award reveals, however, that Dr. Kassan clearly equated

[6] In his revised report, Dr. Kassan indicated that appellant's grip strength was 40.0 pounds on the right, compared to a normal grip strength of 67.0 pounds. He further stated: "there is a loss of strength that impairs the upper extremity beyond any impairment that can be calculated based on loss of active motion or injury to motor nerves. On the right, the grip strength is 40 percent and impairs the upper extremity by 20 percent."

[7] While the Board will not disturb the Office's May 2, 1997 decision awarding appellant an additional three percent permanent partial impairment for the right upper extremity, the Board notes that the Office medical advisor also improperly based the additional three percent recommendation on the degree of appellant's pain, pursuant to table 15 on page 54 and table 11 on page 49, of the *Guides*, which, as explained above, are not to be used in conjunction with an impairment rating made pursuant to table 16, on page 57 of the A.M.A., *Guides*.

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

appellant's loss of grip strength to a 20 percent impairment of her right upper extremity. As Dr. Kassan's additional reports do not provide a basis for a schedule award in addition to the 34 percent for the right upper extremity previously awarded to appellant, there is no evidence of record that appellant has greater than a 34 percent permanent loss of use of her right upper extremity for which she has received a schedule award.

The decisions of the Office of Workers' Compensation Programs dated May 2, 1997 and December 1, 1996 are hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member