

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA C. GARY and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 98-22; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the position of office clerk fairly and reasonably represents appellant's wage-earning capacity such that she is not entitled to further wage-loss compensation; and (2) whether appellant had greater than a seven percent permanent impairment of her right upper extremity, for which she had received a schedule award.

The Office of Workers' Compensation Programs accepted that on March 1, 1990 appellant sustained a right shoulder sprain, impingement syndrome and tendinitis, causally related to her federal employment.

Following a March 6, 1996 right shoulder arthroscopy, appellant returned to permanent light duty with no overhead activities and a 10-pound lifting limit. No copy of the offered job description with pay rate was submitted to the record. No other pay rate information concerning appellant's reemployment pay rate or the pay rate of her date-of-injury job was included in the case record.¹

On May 19, 1997 the Office determined that appellant had been reemployed as an Office clerk with a pay rate of \$34,316.00 per year effective September 19, 1996.² The Office found that appellant's wage as an office clerk as of September 19, 1996, at which she had successfully worked for more than 60 days, was equal to or greater than the wages of her date-of-injury job, such that it fairly and reasonably represented her wage-earning capacity and she had no further entitlement to wage-loss compensation. No numerical or monetary information to support this conclusion appears in the case record.

¹ After the Office's July 16, 1997 decision appellant submitted pay rate information for both her present job and her date-of-injury job, but this cannot now be considered by the Board as it was not before the Office at the time of its formal final decision; *see* 20 C.F.R. § 501.2(c).

² The record contains no evidence to support that appellant was in a retained pay position; *see Don J. Mazurek*, 46 ECAB 447 (1995).

By decision dated July 16, 1997, the Office granted appellant a lump-sum award for a seven percent permanent impairment of her right upper extremity.³ The Office medical adviser used appellant's treating physician's measurements for range of motion and recordation of persistent symptoms and, with correct reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, (1993) determined that she had a seven percent permanent impairment of her right upper extremity. No other contradicting evidence or evidence of a different degree of impairment has been submitted to the record. Therefore, based upon the evidence of record, this calculation of permanent impairment determination is correct.

The Board, however, finds that this case is not in posture for a decision on the issue of appellant's wage-earning capacity.

The Board, in reviewing the complete case record before the Office at the time of its July 16, 1997 decision and May 19, 1997 wage loss determination, cannot find evidence of the current pay rate for appellant's date-of-injury job to compare with her reemployed pay rate and notes that a Form CA-2a states appellant's pay rate as of March 4, 1996 was \$34,316.00 per year, which is \$100.00 less than her alleged current pay rate of her date-of-injury job on the date of injury.⁴

As the record does not contain sufficient information to enable the Board to render an informed decision on this issue in contention, the case will be remanded for supplementation as noted in this decision and order of the Board.

³ Although appellant has not specifically requested an appeal on this issue, the Board will evaluate the evidence to determine whether the seven percent impairment was correct. The Board notes that the rate of pay used to calculate appellant's schedule award was based upon a pay rate of \$34,315.84 per year.

⁴ Appellant contends on appeal that she returned to work with wages of \$33,627.00, but that the present rate for her date-of-injury job was \$34,413.00.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 19, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board; the decision of the Office dated July 16, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 15, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member