

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY A. SPERA and DEPARTMENT OF VETERANS AFFAIRS,
CLEVELAND VETERANS MEDICAL CENTER, Brecksville, OH

*Docket No. 98-513; Submitted on the Record;
Issued November 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a 39 percent permanent impairment of her right upper extremity for which she received schedule awards.

On August 24, 1992 appellant, then a 46-year-old clinical social worker, filed an occupational disease claim alleging that she sustained right carpal tunnel syndrome in the performance of duty. Appellant indicated that she underwent a right carpal tunnel release in 1985 but did not relate her condition to her federal employment until February 1992. The Office of Workers' Compensation Programs assigned the case File Number A9-378630 and accepted the claim for right carpal tunnel syndrome and authorized the right carpal tunnel release.

In a report dated August 16, 1995, an Office medical adviser found that, according to Table 16 on page 57 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) appellant had a 20 percent impairment due to moderate median nerve entrapment.

By decision dated September 5, 1995, the Office granted appellant a schedule award for a 20 percent permanent impairment of her right arm due to her carpal tunnel syndrome.¹

The Office further accepted that appellant sustained right shoulder and elbow strain, impingement syndrome of the right shoulder and a right rotator cuff tear due to a November 1992 employment injury. The Office assigned the case File Number A9-372325.

By decision dated December 4, 1995, the Office terminated appellant's compensation benefits on the grounds that she had no further condition or disability causally related to her

¹ Appellant appealed the decision to the Board; however, by order dated September 26, 1996, the Board dismissed appellant's appeal at her request. Docket No. 96-131 (Order Dismissing Appeal, issued September 26, 1996).

November 7, 1992 employment injury. In decisions dated January 9, 1996, January 30 and May 20, 1996, the Office denied modification of its December 4, 1995 decision.

In a decision dated February 25, 1997, the Office granted appellant a schedule award for an additional 19 percent impairment of her right upper extremity resulting from her shoulder condition.² By decision dated July 11, 1997, a hearing representative affirmed the Office's February 25, 1997 decision.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

Under section 8107 of the Federal Employees' Compensation Act³ and section 10.304 of the implementing federal regulations,⁴ 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 under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

In a report dated January 8, 1996, Dr. John H. Paul, an orthopedic surgeon, opined that appellant had reached maximum medical improvement on that date. He listed the following range of measurements for appellant's right elbow: 0 degrees flexion; 110 degrees extension; 5 degrees pronation; and 10 degrees supination. For the right arm/shoulder, Dr. Paul measured 20 degrees internal rotation; 10 degrees external rotation; 150 degrees forward elevation; 50 degrees backward elevation; 30 degrees abduction; and 30 degrees adduction. He stated that appellant had chronic, marked pain and categorized the total right upper extremity impairment due to weakness, loss of motion and pain as 50 percent.

In a report dated June 5, 1996, an Office medical adviser reviewed Dr. Paul's January 8, 1996 report and properly applied his clinical findings to the appropriate tables and pages of the A.M.A., *Guides*. He found that, for the elbow, 0 degrees flexion constituted no impairment; 110 degrees extension constituted a 4 percent impairment;⁶ 50 degrees pronation constituted a 2 percent impairment;⁷ and 10 degrees supination constituted a 3 percent impairment,⁸ which he

² On March 25, 1997 the Office doubled file number A9-378630 into file number A9-372325.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ *James J. Hjort*, 45 ECAB 595 (1994).

⁶ A.M.A., *Guides* 40, Figure 32. It appears that both Dr. Paul and the Office medical adviser reversed the range of motion findings for flexion and extension.

⁷ *Id.* at 41, Figure 35.

⁸ *Id.*

added together to reach a total elbow impairment of 9 percent.⁹ For appellant's right shoulder, the Office medical adviser found that 20 degrees internal rotation constituted a 4 percent impairment;¹⁰ 10 degrees external rotation constituted a 2 percent impairment;¹¹ 150 degrees of flexion constituted a 2 percent impairment;¹² 50 degrees extension constituted no impairment;¹³ 30 degrees abduction constituted a 7 percent impairment;¹⁴ and 20 degrees adduction constituted a 1 percent impairment,¹⁵ for a total shoulder impairment of 16 percent.¹⁶ He further calculated that, pursuant to Table 15 on page 54 of the A.M.A., *Guides*, the maximum 5 percent impairment for pain of the axillary nerve, multiplied by the 60 percent graded pain found in Table 11 on page 48, resulted in a 3 percent impairment due to pain. The Office medical adviser then determined that weakness of the axillary nerve constituted a 35 percent impairment according to Table 15 on page 54 of the A.M.A., *Guides* which, after grading the loss of strength as 50 percent under Table 12 on page 4 and multiplying the figures together, constituted an 18 percent impairment due to loss of strength. The Office medical adviser combined the 9 percent impairment due to loss of elbow motion, the 16 percent impairment due to loss of shoulder motion, the 3 percent impairment due to pain and the 18 percent impairment due to loss of strength and concluded that appellant had a 39 percent impairment of the right upper extremity.

As the Office medical adviser's determination conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence and establishes that appellant has no more than a 39 percent impairment to the elbow and shoulder. However, the Office subtracted the 20 percent right upper extremity impairment previously awarded to appellant due to her carpal tunnel syndrome from the 39 percent impairment due to her shoulder and elbow injury prior to determining the total impairment of her right arm. The Office procedural manual states that a previous impairment to a member is included in ascertaining the percentage of loss except if "[t]he prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment."¹⁷ The Office should, therefore, have determined the total impairment of appellant's right arm prior to subtracting the 20 percent previously awarded due to her carpal tunnel syndrome. Consequently, the case must be remanded for the Office medical adviser to calculate appellant's total arm impairment. After further development as it may find necessary, the Office should issue a *de novo* decision.

⁹ *Id.* at 41.

¹⁰ *Id.* at 45, Figure 44.

¹¹ *Id.*

¹² *Id.* at 43, Figure 38.

¹³ *Id.*

¹⁴ *Id.* at 44, Figure 41.

¹⁵ *Id.*

¹⁶ *Id.* at 45.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(2)(a) (March 1995).

The decisions of the Office of Workers' Compensation Programs dated July 11 and February 25, 1997 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
November 26, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member