

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EQUILLA BELCHER and DEPARTMENT OF THE ARMY,
ARMY MEDICAL DEPARTMENT & SCHOOL, Fort Sam Houston, TX

*Docket No. 98-593; Submitted on the Record;
Issued November 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant had a 3 percent permanent impairment of the left arm and a 9 percent permanent impairment of the right arm; and (2) whether the Office properly paid compensation at a rate of 66 2/3 percent of appellant's monthly pay.

On March 8, 1994 appellant, then a 48-year-old secretary, filed a claim for tendinitis, trigger finger and trigger thumb. Appellant related her condition to repetitive motion in typing. An official from the employing establishment indicated that appellant's work assignments had increased due to the temporary loss of all other clerical personnel. The official reported that appellant was initially hired in 1988 to type for the chief of the employing establishment and to handle some overflow typing. He noted that due to administrative reorganization and a reduction-in-force, appellant, in 1993, was temporarily doing the typing for 19 people. The Office accepted appellant's claim for bilateral carpal tunnel syndrome, bilateral trigger finger and a trigger thumb of the right hand. Appellant stopped working on July 13, 1995 and underwent surgery on October 2, 1995 for right carpal tunnel release and trigger thumb release and on January 4, 1996 for left carpal tunnel release. She returned to work on March 11, 1996 and received temporary total disability for the period July 14, 1995 through March 11, 1996.

On July 17, 1995 appellant filed a claim for a schedule award. In a November 17, 1997 decision, the Office issued a schedule award for a 9 percent permanent impairment of the right arm and a 3 percent permanent impairment of the left arm for a total 12 percent permanent impairment. The Office indicated that appellant would be paid at a rate of 66 2/3 percent of her monthly salary and that the period of the award was from December 5, 1996 through August 24, 1997.

In regard to the schedule award, the Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner, in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

In a June 12, 1996 report, Dr. Paul D. Pace, a Board-certified surgeon specializing in hand surgery, reported that appellant had +10 degrees of extension and 52 degrees of flexion in the metacarpophalangeal joint of the right thumb. Dr. Pace indicated that appellant had -1 degree of extension and 56 degrees of extension in the interphalangeal joint of the right thumb. He noted that appellant had 38 degrees of abduction in the right thumb, a loss of 2 centimeters of adduction and a retained 5 centimeters of opposition. Dr. Pace reported that appellant, in the left wrist, had extension of 60 degrees, flexion of 44 degrees, radial deviation of 29 degrees and ulnar deviation of 42 degrees. In the right wrist, he indicated that appellant had extension of 54 degrees, flexion of 49 degrees, radial deviation of 22 degrees and ulnar deviation of 37 degrees. Dr. Pace reported that appellant had a pain severity of 5 in the left arm and 4 in the right arm on a scale of 1 to 10. He noted that appellant had a key pinch strength of 2.4 in the left hand and 3.6 in the right hand. Dr. Pace indicated that appellant had a grip strength ranging from 23.7 pounds to 28 pounds in the left hand and 26.3 pounds to 30.3 pounds in the right hand in the second and third positions. He concluded, based on the third edition of A.M.A., *Guides* that appellant had a three percent permanent impairment of the left arm and an eight percent permanent impairment of the right arm. Dr. Pace concluded that appellant had reached maximum medical improvement.

In a September 30, 1997 memorandum, an Office medical adviser indicated that appellant had a 1 percent permanent impairment for +10 degrees of extension in the metacarpophalangeal joint in the right thumb; no permanent impairment for 52 degrees of flexion in the metacarpophalangeal joint; a 1 percent permanent impairment for 56 degrees of flexion in the interphalangeal joint; a 1 percent permanent impairment for -1 degrees of extension in the right thumb; an 8 percent permanent impairment for 6 centimeters of adduction in the thumb; a 2 percent permanent impairment for 38 degrees of abduction in the thumb and a 5 percent permanent impairment for 5 centimeters of opposition in the right thumb. The medical adviser concluded that appellant had a 17 percent permanent impairment of the right thumb, which equaled a 6 percent permanent impairment of the right arm. For the right wrist, the medical

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 4th ed. (1993).

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

adviser indicated that appellant had 1 percent permanent impairment for 54 degrees of flexion and a 2 percent permanent impairment for 49 degrees of extension. He found no permanent impairment due to ulnar or radial deviation. Dr. Pace reported that appellant had a three percent permanent impairment due to loss of motion of the right wrist, which with the six percent permanent impairment for loss of motion in the right thumb, equaled a nine percent permanent impairment of the right arm. In regard to the left arm, the medical adviser found that appellant had a 3 percent permanent impairment for 44 degrees of extension. He found no other permanent impairment in the left arm for loss of motion. Dr. Pace stated appellant reached maximum medical improvement as of June 12, 1996. The Office based the schedule award on the findings of the Office medical adviser.

The Office medical adviser properly and accurately used the fourth edition of the A.M.A., *Guides* to calculate appellant's permanent impairment based on appellant's loss of motion. However, he did not consider Dr. Pace's report of pain in both arms as part of appellant's permanent impairment. Also, he reported strength tests which the Office medical adviser did not review to determine whether appellant had a loss of strength, which would contribute to her permanent impairment. Pain and loss of strength are graded according to the guidelines in the A.M.A., *Guides* and must be applied where applicable as part of the determination of appellant's permanent impairment and the resulting schedule award.⁵ Also, in an August 11, 1997 report, Dr. Pace indicated that appellant had a persistent left trigger finger even though it had been treated with multiple injections. The Office did not include the accepted left trigger finger in the schedule award calculation. The case will, therefore, be remanded for a determination of whether appellant had any additional permanent impairment of the arms due to pain, loss of strength and the left trigger finger. After such further development as it may find necessary the Office should issue a *de novo* decision.

The Board further finds that appellant is entitled to a compensation rate of 75 percent of her monthly pay rather than the 66 2/3 percent paid by the Office.

In her initial claim for compensation, appellant reported that the questions relating to dependents did not apply to her. However, in a February 22, 1997 letter, appellant requested an augmented compensation rate. She stated that she had been previously unaware that her husband was considered a dependent under the Act. Under the Act, a husband in the same household as a claimant is considered to be a dependent. Appellant, therefore, is entitled to augmented compensation at a rate of 75 percent permanent impairment of her monthly pay because she had at least one dependent.⁶ The Office, therefore, must adjust appellant's compensation payments in accordance with section 8110 of the Act.

⁵ Donald S. Saunders, 41 ECAB 516 (1990).

⁶ 5 U.S.C. § 8110.

The decision of the Office of Workers' Compensation Programs, dated November 17, 1997, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
November 17, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member