

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RHONDA S. RERA and U.S. POSTAL SERVICE,
POST OFFICE, Lancaster, PA

*Docket No. 97-2779; Submitted on the Record;
Issued September 23, 1999*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she has more than a 16 percent permanent impairment of her left upper extremity, for which she received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a bilateral ulnar neuropathy and authorized cubital tunnel surgery. By decision dated August 1, 1996, the Office granted appellant a schedule award for a 10 percent permanent impairment of her right upper extremity. The award ran from June 6, 1996 to January 10, 1997.

In a report dated October 24, 1996, Dr. Stuart A. Hartman, an osteopath, determined that appellant had a 9.3 percent permanent impairment of her right upper extremity and a 24 percent permanent impairment of her left upper extremity based on the relevant standards of the The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Hartman found that a sensory deficit of 60 percent times 7 percent equaled to a 9.3 percent right upper extremity impairment. He stated that appellant's left side had a sensory and pain deficit of 60 percent and that an impairment due to combined motor and sensory was 40 percent, which provided an overall left upper extremity deficit of 24 percent.

In a March 11, 1997 memorandum, an Office medical adviser reviewed Dr. Hartman's October 24, 1996 medical report and utilized the A.M.A., *Guides*. In calculating the left-sided impairment, the Office medical adviser indicated that there was no motor impairment or loss of grip strength noted on appellant's examination. He stated that Table 16, p. 56 of the A.M.A., *Guides*, rated mild ulnar entrapment at the elbow at 10 percent. Dr. Hartman indicated that Table 16 could not be used with grip strength and stated that this was an "either/or" situation. He noted that although Dr. Hartman calculated a 9.3 percent right arm impairment, a sensory deficit of 60 percent times 7 percent should yield a 4.2, not a 9.3 percent. The Office medical adviser concluded that Table 16, p. 57 would give a higher award of the left arm (10 percent impairment) and noted that a 10 percent impairment was already awarded for the right arm.

By decision dated March 20, 1997, the Office granted appellant a schedule award for a 10 percent permanent impairment of her left upper extremity. The award ran from January 29 to March 1, 1997.

In an April 1, 1997 report, Dr. Hartman stated that it did appear that there was a typographical error in his March 18, 1997 report. Dr. Hartman stated that he followed the outline on page 48 and on page 54, Table 15. He stated that a Grade III on the left would elicit a sensory deficit of 60 percent and as appellant has a decrease in sensation in the ulnar nerve below the forearm, which was rated at 7 percent, the digits totaled 14 percent. Multiplying the 60 percent sensory deficit by the 14 percent decrease in sensation gave a combination of 8.4. Dr. Hartman additionally noted that the left side did have a combined motor and sensory deficit and the total of 24 percent left upper extremity impairment was correct and accurate.

In a June 20, 1997 memorandum, the Office medical adviser reviewed Dr. Hartman's April 1, 1997 report and determined that appellant had a 16 percent total impairment of the left upper extremity. Utilizing the A.M.A., *Guides*, Table 15, p. 54, the Office medical adviser noted that an ulnar nerve above midforearm provided a maximum sensory rating of 7 percent and a maximum motor rating of 46 percent. Noting that pain and loss of sensation of a Grade III level rated a 60 percent impairment, he multiplied the 60 percent by the 7 percent sensory rating to obtain 4 percent. Noting that appellant could move against some resistance, a Grade IV motor strength provided a 25 percent rating, which he multiplied by the 46 motor rating to obtain 11.5 percent or 12 percent. The combined sensory and motor values of 4 and 12 percent equated to a 16 percent total left upper extremity impairment, of which the Office medical adviser noted that 10 percent was previously awarded. The Office medical adviser stated that the maximum figure for combined motor and sensory impairment would only be used if each function was impaired to the same degree (as in transaction of the nerve).

By decision dated July 3, 1997, the Office granted appellant an additional 6 percent permanent impairment for her left upper extremity bringing a total award of 16 percent for the left upper extremity. The award ran from September 5, 1997 to January 12, 1998.

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 16 percent permanent impairment of her left upper extremity, for which she received a schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that if there is 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.¹ Neither the Act nor the regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.²

¹ 5 U.S.C. § 8107(a).

² *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In his April 1, 1997 report, Dr. Hartman stated that followed the outline on page 48 and utilized Table 15 on page 54 and that the combined motor and sensory deficit totaled a 24 percent left upper extremity impairment. He noted that appellant's sensory loss in the ulnar nerve above the forearm yielded a 7 percent impairment; that a Grade III a sensory deficit yielded a 60 percent; and found that the digits totaled 14. Dr. Hartman multiplied the 60 percent sensory deficit by the 14 percent decrease in sensation to find a combination of 8.4. He did not provide his calculations for appellant's motor deficit. In his June 20, 1997 memorandum, the Office medical adviser reviewed Dr. Hartman's report and determined that appellant's percentage rating to her upper left extremity equated to a 16 percent total rating by using Table 15, p. 54 in conjunction with Tables 11 and 12, pp. 48, 49. The Office medical adviser properly noted the maximum impairment values for the ulnar nerve above midforearm under Table 15, p. 54 for both a sensory and motor impairment and multiplied each figure by the corresponding Grade level of loss of sensory and motor strength under Tables 11 and 12, pp. 48, 49. The combined values of 4 percent sensory deficit rating (60 percent times 7 percent) and a 12 percent motor deficit rating (25percent times 46 percent) yield a total of a 16 percent upper extremity impairment. The Office medical adviser additionally stated that as the motor and sensory impairment were not impaired to the same degree, the maximum figure for the combined motor and sensory impairment could not be used. As the Office medical adviser properly noted that appellant was previously awarded a 10 percent left upper extremity impairment, he opined that appellant was only entitled to an additional impairment rating of 6 percent. The Office properly based appellant's additional schedule award of six percent on the calculation of its medical adviser since his calculation of the percentage of impairment of appellant's left upper extremity impairment sufficiently conforms to the A.M.A., *Guides*.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 3 and March 20, 1997 are affirmed.

Dated, Washington, D.C.
September 23, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member