U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY M. VELLARDITA and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Rockville, MD

Docket No. 99-974; Submitted on the Record;
Issued August 4, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a 90 percent permanent impairment for the loss of use of the left arm and a 40 percent permanent impairment for the loss of use of the right arm, for which she has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than a 90 percent permanent impairment for the loss of use of the left arm and a 40 percent permanent impairment for the loss of use of the right arm, for which she has already received a schedule award.

On February 6, 1984 appellant, then a 30-year-old clerk, filed a traumatic injury claim (Form CA-1) assigned number A25-0250317 alleging that on that date she injured her left hand and wrist while removing a number two brown bag from a truck.[1] The Office accepted appellant's claim for left carpal tunnel syndrome, tenosynovitis and post tendon release, left little finger and cubital tunnel syndrome of the left hand and authorized cubital tunnel release.[2]

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[1] Prior to filing her February 6, 1984 traumatic injury claim, appellant filed a traumatic injury claim on July 12, 1982 assigned number A25-0218755 alleging that on July 9, 1982 she sustained a pinched nerve in her right hand extending down into her wrist while throwing letters and attempting to open the clasp on her mailbag. The Office of Workers' Compensation Programs accepted appellant's claim for a sprained right wrist and hand and carpal tunnel syndrome.

[2] By letter dated October 31, 1990, the Office advised appellant that based on the information she submitted, she may have sustained a recurrence of disability. The Office then advised appellant to submit a claim for a recurrence of disability (Form CA-2a). By decision dated December 13, 1990, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or about October 1988. In a July 9, 1991 letter, appellant requested reconsideration of the Office's decision. In a decision dated September 5, 1991, the Office granted appellant's request for modification based on a merit review of the claim finding the evidence of record sufficient to establish that appellant sustained a recurrence of disability on or about October 1988.

On August 20, 1986 appellant filed a claim for an occupational disease (Form CA-2) assigned number A25-0292739 alleging that she had carpal tunnel syndrome of the right hand in August 1982.[3] The Office accepted appellant's claim for right carpal tunnel syndrome. On August 22, 1990 appellant filed a claim (Form CA-7) for a schedule award. On February 4, 1991 the Office granted appellant a schedule award for a 16 percent loss of use of the right arm for the period December 5, 1990 through November 19, 1991.

On July 7, 1992 appellant filed a Form CA-7 for her February 6, 1984 employment injury. By letter dated September 29, 1992, the Office advised appellant of its receipt of her claim. The Office also advised appellant that no response had been received from Dr. Frank Seinsheimer, a Board-certified orthopedic surgeon and appellant's treating physician, regarding its request that he determine the degree of permanent impairment due to the accepted work-related injury. The Office then advised appellant that she had 30 days from the date of this letter to submit the enclosed forms to be completed by her attending physician.

Dr. Seinsheimer submitted completed forms indicating that appellant had a 10 percent permanent impairment of the upper extremity. By letter dated November 3, 1992, the Office advised Dr. Seinsheimer to clarify his finding.

On February 26, 1993 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left upper extremity for the period December 12, 1991 through July 17, 1992.

On May 18, 1998 appellant filed a Form CA-7 for an additional schedule award. On October 27, 1998 the Office received medical evidence indicating that appellant had a 70 percent impairment of the left upper extremity and a 40 percent impairment of the right upper extremity. On November 3, 1998 an Office medical adviser reviewed the medical evidence of record and determined that appellant had a 90 percent permanent impairment of the left upper extremity.

On December 2, 1998 the Office granted appellant a schedule award for an 80 percent loss of use of the left upper extremity for the period October 22, 1998 through August 4, 2003 totaling a schedule award for a 90 percent loss of use of the left upper extremity. Subsequently, an Office medical adviser reviewed the medical evidence of record based on the Office's request to do so and determined that appellant had a 40 percent permanent impairment of the right upper extremity.[4]

[3] In a July 7, 1991 letter, the Office advised appellant that her claim assigned number A25-292739 had been combined with A25-250317 into a file assigned number A25-292739.

[4] A telephone memorandum dated December 7, 1998 indicated that appellant informed the Office that the schedule award should have been for the right and left extremities. The Office advised appellant that the schedule award computations were based on the left upper extremity only and that the case would be sent back to the Office medical adviser to determine a permanent impairment rating for the right upper extremity.

On December 17, 1998 the Office granted appellant a schedule award for a 90 percent loss of use of the left arm and an additional 24 percent loss of use of the right arm, totaling 40 percent.[5]

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing regulation,[7] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[8] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[9]

In support of her claim for an additional schedule award, appellant submitted an October 22, 1998 medical report of Dr. Jerome J. Schnapp, a Board-certified internist. In this report, Dr. Schnapp provided a history of appellant's right and left upper extremity employment injuries, medical treatment and employment, and a review of medical records. He noted his findings on physical and objective examination, and a final diagnosis of right carpal tunnel syndrome, left carpal tunnel syndrome and left cubital tunnel syndrome. Dr. Schnapp determined:

> "With respect to the carpal tunnel syndrome in the right hand, using [T]able 16 which describes the entrapped nerve as the median nerve and the entrapment site as the wrist the degree of severity and percent upper extremity impairment is 40 percent. This then becomes a 24 percent whole person impairment. In the left upper extremity the carpal tunnel wrist entrapment of the median nerve is also rated as severe and is a 40 percent upper extremity impairment which is therefore a 24 percent whole person impairment. In addition there is a cubital tunnel syndrome with entrapment of the ulnar nerve at the elbow which is rated as severe and is a 50 percent upper extremity impairment and this combined with the carpal tunnel syndrome becomes a 70 percent upper extremity impairment and therefore

[5] In granting appellant a schedule award for an additional 24 percent loss of use of her right arm, the Office noted that total impairment of the right arm was 40 percent, but that appellant's previous schedule award was for 16 percent.

[6] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[7] 20 C.F.R. § 10.304.

[8] 5 U.S.C. § 8107(c)(19).

[9] *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

a 42 percent whole person impairment. In combining the two extremities the combined value is a 56 percent whole person impairment.

"In summary then [appellant] has a permanent partial whole person impairment of 56 percent."

An Office medical adviser reviewed appellant's medical records, including Dr. Schnapp's October 22, 1998 medical report and determined that appellant had a 90 percent permanent impairment of the left upper extremity. Specifically, the Office medical adviser opined that appellant had reached maximum medical improvement on October 22, 1998. Regarding appellant's left carpal tunnel syndrome and severe median nerve, the Office medical adviser determined that appellant had a 40 percent impairment based on Table 16, page 3/57 of the fourth edition of the A.M.A., *Guides*. Regarding appellant's severe left cubital ulnar nerve tunnel syndrome, the Office medical adviser determined that appellant had a 50 percent impairment based on the same table. The Office medical adviser then calculated a 90 percent permanent impairment of the left upper extremity by adding the above impairment ratings.

The Office medical adviser further determined that appellant's severe right cubital tunnel syndrome constituted a 40 percent permanent impairment of the right upper extremity based on Table, 16, page 3/57 of the fourth edition of the A.M.A., *Guides*.

The Board finds that the Office medical adviser properly applied the fourth edition of the A.M.A., *Guides*. Therefore, the medical evidence of record does not support a finding that appellant is entitled to an additional schedule award at this time.

The December 17 and 2, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 4, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member