U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOTTIE M. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, OK

Docket No. 97-2475; Submitted on the Record;
Issued January 6, 2000

DECISION and ORDER

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

The issue is whether appellant is entitled to an increased schedule award.

On November 9, 1987 the Office of Workers' Compensation Programs issued a schedule award for a 27 percent permanent loss of use of each wrist.[1] The Office based this award on the September 10, 1987 report of Dr. Michael Karathanos, appellant's attending neurologist. He reported that appellant had a 5 percent impairment of each wrist due to a decreased range of motion and a 22 percent impairment due to sensory loss associated with pain and pain interfering with activities. Dr. Karathanos concluded that appellant had a 27 percent impairment of each extremity. He noted that appellant had achieved maximum medical improvement "as of now." The period of the schedule award accordingly began on September 10, 1987, the date of his report.[2]

[1] Section 8107 of the Federal Employees' Compensation Act makes no provision for the loss or loss of use of the wrist. It provides instead for the payment of 312 weeks compensation for the loss of an arm, with partial losses compensated proportionately. 5 U.S.C. § 8107. A 27 percent impairment of one arm represents 84.24 weeks compensation. As appellant received 168.48 weeks compensation, she received compensation for a 27 percent permanent impairment of each arm.

[2] On October 26, 1987 Dr. Karathanos reported that appellant's date of maximum medical improvement was June 22, 1987, the date she returned to full-time employment.

On December 10, 1988 Dr. Karathanos related appellant's complaints and his findings on examination. He then reported:

> "Using the American Medical Association[,] [G*uides to the Evaluation of] Permanent Impairment* [2d ed. 1984], [appellant] has been rated as follows:
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> "Using Table 4, 5, 9 and the Combined Values Chart, I reached the following conclusions:
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> "On the right arm [appellant] has nerve impairment of the medial nerve below the mid-forearm. The calculated impairment is 32 [percent] because of loss of function due to sensory deficit and pain. Impairment due to loss of motor strength and function is 7 [percent] (35 [percent times] 20). This gives a combined value of 39 [percent].
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> "The left side she has an impairment because of medial nerve dysfunction of 32 [percent] (80 [times] 40 [percent]) and motor strength deficit of again 7 [percent]. Because the left is the known preferred extremity, this is decreased by 2 [percent], which results in an impairment of 37 [percent]."

On October 23, 1989 an Office medical adviser reviewed Dr. Karathanos's report of December 10, 1988 and found it very difficult to understand his ratings. He recommended that the Office obtain either clarification or a second opinion.

The Office referred appellant to Dr. M.R. Workman, a Board-certified orthopedic surgeon, for a second opinion. In his report of June 5, 1990, he found that appellant had electromyographic evidence of persistent median nerve damage at the level of the wrist bilaterally. Using Tables 14, 10 and 11 of the A.M.A., *Guides* (no edition specified), Dr. Workman determined that appellant had a permanent impairment of each upper extremity of 30 percent due to decreased sensation with pain interfering with activity and 10 percent due to complete range of motion against gravity and some resistance, for a total impairment rating of 40 percent for each upper extremity. On the question of maximum medical improvement, he reported that appellant reached this point after she completed her chronic pain clinic program, the exact date of which Dr. Workman did not know. He reasoned that the records would indicate that all treatment subsequent to the program and much of the treatment prior to the program was due to psychological problems rather than to appellant's on-the-job injury.

In a February 28, 1996 decision, an Office hearing representative found that the case was not in posture for a final decision on the issue of an increased schedule award. Noting that the Office had not submitted Dr. Workman's report to a district medical director for review, the hearing representative instructed the Office to make a final finding on the extent of the job-related permanent impairment to appellant's upper extremities.

On March 28, 1996 the district medical adviser reported that it was not clear how Dr. Workman derived his impairment percentages and that clarification was warranted.

In a report dated May 6, 1996, Dr. Workman clarified that he used the third edition of the A.M.A., *Guides*.[3] Citing Table 10, page 42, he graded the degree of decreased sensation or pain as "decreased sensation with or without pain, which interferes with activity." From a range of 26 to 60 percent for this grade, Dr. Workman chose 30 percent for each upper extremity based upon appellant's history, physical examination and a radiographic report. Citing Table 11, page 42, he graded the degree of loss of power as "complete range of motion against gravity and some resistance, or reduced fine movements and motor control." From a range of 1 to 25 percent, he chose 10 percent for each upper extremity based on appellant's history and physical examination. These ratings, Dr. Workman explained, equaled 40 percent to each upper extremity. He also clarified that his June 6, 1990 letter (actually June 5, 1990) contained a typographic error, namely, the inclusion of Table 14. "Table 14," he stated, "was not used in determining her impairment status."[4]

On May 29, 1996 the district medical adviser reviewed Dr. Workman's supplemental report and correctly observed that Dr. Workman had failed to multiply his grading percentages by the maximum impairment value of the affected nerve, which procedure is set forth in the A.M.A., *Guides*. Noting that the maximum loss of function due to sensory deficit or pain involving the median nerve below the midforearm was 40 percent, according to Table 14, page 46, the district medical adviser multiplied 40 percent by Dr. Workman's grading of 30 percent and determined that appellant had a permanent impairment of each upper extremity of 12 percent due to sensory deficit or pain. Noting that the maximum loss of function due to motor deficit or loss of power involving the median nerve below the midforearm was 35 percent, according to Table 14, page 46, the district medical adviser multiplied 35 percent by Dr. Workman's grading of 10 percent and determined that appellant had a permanent impairment of each upper extremity of 4 percent due to motor deficit or loss of power. Using the combined values chart on page 254, the district medical adviser concluded that Dr. Workman's reports supported a 16 percent permanent impairment of each upper extremity. The district medical adviser added that the date of maximum medical improvement would be the date of Dr. Workman's rating, or June 5, 1990.

In a decision dated May 29, 1996, the Office found that the evidence failed to support that appellant had any entitlement to compensation greater than that previously awarded for a schedule award. The Office also found that appellant was not entitled to premium pay.

In a decision dated April 23, 1997, an Office hearing representative found that appellant had no greater than a 27 percent permanent impairment of each upper extremity and was therefore not entitled to an increased schedule award.[5]

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[3] It is apparent from his reference to pages and tables that Dr. Workman used the revised third edition.

[4] Table 14, page 46, of the A.M.A., *Guides* (3d ed. rev. 1990) shows the maximum impairment values of nerves innervating the affected area. The grading scheme and procedure set forth in the A.M.A., *Guides* requires the use of these values in determining permanent impairment.

[5] Because the hearing representative returned the case to the Office for further development on the issue of premium pay, that issue is in an interlocutory posture and the Board lacks jurisdiction to review it on this appeal. 20 C.F.R. § 501.2(c).

The Board finds that this case is not in posture for a determination of whether appellant is entitled to an increased schedule award. A conflict in medical opinion necessitates referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

Dr. Workman, determined that appellant had a 40 percent permanent impairment of each upper extremity. In making this determination, however, he failed to follow the grading scheme and procedure set forth in the A.M.A., *Guides*. The A.M.A., *Guides* requires the physician to identify the nerve innervating the area of involvement, find the maximum impairment value of the affected nerve using the appropriate table and then multiply this value by the graded degree of loss of function.[6] Dr. Workman simply graded the degree of pain (30 percent) and weakness (10 percent). He explained that he did not use the table showing maximum impairment values of the affected nerve. An Office medical adviser took the grades reported by Dr. Workman and, properly following the procedure set forth in the A.M.A., *Guides*, determined that Dr. Workman's reports supported a 16 percent permanent impairment of each upper extremity, or less than the 27 percent for which appellant received a schedule award.

Appellant's attending physician, Dr. Karathanos, reported that appellant had a 39 percent permanent impairment of the right upper extremity and a 37 percent permanent impairment of the left. He identified the affected nerve as the median nerve below the midforearm, which has a maximum impairment value of 40 percent for pain and 35 percent for weakness. Dr. Workman graded the degree of pain for both upper extremities at 80 percent, representing decreased sensation with or without pain, which may prevent activity (minor causalgia). He multiplied 80 percent by the maximum impairment value for pain and determined that appellant had a 32 percent impairment of each extremity due to pain. Dr. Workman graded the degree of weakness at 20 percent, representing complete range of motion against gravity and some resistance, or reduced fine movements and motor control. He multiplied 20 percent by the maximum impairment value for weakness and determined that appellant had a 7 percent impairment of each extremity due to weakness. Dr. Workman combined the 32 percent impairment for pain and the 7 percent impairment for weakness for a total of 39 percent for each upper extremity, but the Combined Values Chart shows that these impairments combine to 37 percent. Finally, the second edition of the A.M.A., *Guides*, which was the edition in effect when Dr. Karathanos offered his December 10, 1988 opinion, provides that when the impairment of the nonpreferred upper extremity has been determined to be between 5 and 50 percent, the value should be reduced by 5 percent because the basic tasks of everyday living are more dependent upon the preferred extremity. As Dr. Karathanos reported that the left was the known preferred extremity, his opinion supports that appellant has a 37 percent permanent impairment of the left upper extremity and a 32 percent impairment of the right upper extremity, both of which are greater than the 27 percent for which she received a schedule award.

The record thus shows a disagreement between appellant's attending physician and the Office referral physician on whether appellant has greater than a 27 percent permanent impairment of each upper extremity. Although they used different editions of the A.M.A., *Guides*, the grading schemes and procedures are nearly identical. The disagreement arises not because of the editions used but because the physicians selected different percentages for

[6] *See* A.M.A., *Guides*, Tables 10 and 11, page 42 (3d ed. rev. 1990).

grading appellant's pain and weakness. Both Drs. Karathanos and Workman agreed that appellant had complete range of motion against gravity and some resistance, or reduced fine movements and motor control, but Dr. Karathanos selected 20 percent under this grade while Dr. Workman selected 10 percent. The physicians disagreed also on the grade of appellant's pain, with Dr. Karathanos reporting that appellant had decreased sensation with or without pain, which may prevent activity (80 percent), while Dr. Workman reported that appellant has decreased sensation with or without pain, which interferes with activity (30 percent).

Section 8123(a) of the Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[7]

To resolve the conflict in opinion between Drs. Karathanos and Workman, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist for an evaluation and opinion on whether appellant has more than a 27 percent permanent impairment of each upper extremity. The impartial medical specialist should also clarify when appellant reached maximum medical improvement and should support this date with sound medical reasoning and reference to the medical record. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for an increased schedule award.

The April 23, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
January 6, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[7] 5 U.S.C. § 8123(a).