

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of HALLIE CHAPMAN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 98-1014; Submitted on the Record;  
Issued January 18, 2000*

---

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 53 percent impairment of the right upper extremity, for which she received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 53 percent impairment of the right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) have been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

On September 17, 1971 appellant, then a 32-year-old food service worker, sustained an injury to her right hand and arm when she was attacked by a patient in the performance of duty. The Office accepted that she sustained work-related right wrist sprain with ganglion and arterial ischemia of the right upper extremity, which necessitated surgical repair.<sup>4</sup> By decision dated

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>4</sup> Appellant developed a cyst of the volar surface of the right wrist and underwent surgery in February 1972.

October 22, 1976, the Office granted appellant a schedule award for a 25 percent permanent impairment of the right upper extremity in accordance with a July 8, 1976 report from Dr. Robert D. Zaas, a Board-certified orthopedic surgeon and appellant's treating physician. Subsequently, on the basis of new medical evidence, by decision dated April 27, 1992, the Office granted appellant a schedule award for an additional 12 percent permanent impairment, for a total of 37 percent permanent impairment. The Office based its decision on the March 25, 1992 opinion of the Office medical adviser who applied the standards of the A.M.A., *Guides*<sup>5</sup> to the October 24, 1991 findings of Dr. Zaas.<sup>6</sup> In March 1997, appellant filed a claim for an additional schedule award and submitted a March 28, 1997 medical report from Dr. Zaas in support of her request. In a decision dated August 4, 1997, the Office granted appellant a

---

Subsequent to the surgery, it was discovered that appellant had a complete absence of right radial pulse adjacent to the scar for the cyst operation. Appellant underwent a right thoracotomy and dorsal sympathectomy after brachial arteriogram showed a block of the right radial artery of the wrist.

<sup>5</sup> Pursuant to FECA Bulletin No. 89-30 (issued September 29, 1989), the Office claims examiner instructed the Office medical adviser to use the third edition of the A.M.A., *Guides* for calculating the degree of physical impairment. In the case of *Leisa D. Vassar*, the Board found that it was proper for the Office to adopt the most current edition of the A.M.A., *Guides*, published in 1988, as a standard for making schedule award decisions effective March 8, 1989. *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989). It appears from the Office medical adviser's report, however, that in finding appellant entitled to an additional 12 percent permanent impairment, the Office medical adviser utilized the revised version of the third edition of the A.M.A., *Guides*, which became effective September 1, 1991. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.8 (November 1993).

<sup>6</sup> In a report dated October 24, 1991, Dr. Zaas noted that appellant had weakness of the right hand, cold sensitivity and progressively increasing stiffness extending all the way up the right arm and affecting the right shoulder, increasing in recent years. He noted that examination revealed persisting atrophy of the right arm and forearm, with the right mid-biceps area about ½ inch less in girth than the left side, and the right forearm girth approximately ¼ inch less than the left side. The right radial pulse was absent and there was palpable coldness of all of the fingers of the right hand. Capillary return of the right thumb and index finger was 4.5 to 5 seconds compared to less than 2 seconds on the left side. Grip strength, particularly thumb-finger grip, was much weaker on the right side than the left, with grip meter readings showing a grip strength of 15 on the right compared to 80 on the left. Appellant also had a slight thenar and hypothenar muscle atrophy in the right hand. Range of motion testing revealed that dorsiflexion of the right hand was limited to 45 degrees and palmar flexion to 35 degrees. Radial and ulnar deviation were each carried out to approximately 18 degrees. Motion of the right elbow was 3 degrees through 135 degrees, with pronation and supination both carried out to 80 degrees. Forward elevation of the right shoulder was limited to 95 degrees and abduction to 85 degrees, but with a good deal of pain. In the adducted position, internal rotation was carried out through full 40 degrees, but external rotation was limited to 60 degrees. Dr. Zaas commented that a significant degree of appellant's disability related to her arterial insufficiency distal to the right wrist due to the blocked radial artery. The physician also noted that in the past two or three years, appellant's cold intolerance, grip strength weakness, stiffness and pain in the right upper extremity had all increased in severity. Dr. Zaas opined that appellant had a 55 percent permanent impairment and loss of physical function of her right upper extremity.

schedule award for an additional 16 percent permanent impairment, for a total of 53 percent. The Office based its decision on the July 19, 1997 opinion of the Office medical adviser who applied the standards of the A.M.A., *Guides*<sup>7</sup> to the March 28, 1997 findings of Dr. Zaas. Appellant timely requested reconsideration and submitted an August 22 and October 20, 1997 report from Dr. Zaas in support of her request. In a decision dated January 20, 1998, the Office found the newly submitted evidence insufficient to warrant modification of the prior decision. The Office based its decision on the December 5, 1997 report of the Office medical adviser who reviewed the October 20, 1997 report from Dr. Zaas. The instant appeal follows.

In his March 28, 1997 report, Dr. Zaas gave detailed findings and measurements that were very similar to those contained in his October 24, 1991 report, in which Dr. Zaas concluded that appellant had a 55 percent impairment of her right upper extremity, with the only real differences being a decrease in palmar flexion from 35 degrees in 1991 to 30 degrees in 1997 and a decrease in ulnar deviation from 18 degrees in 1991 to only 5 degrees in 1997.<sup>8</sup> In his follow up reports dated August 22 and October 20, 1997, submitted with appellant's request for reconsideration, Dr. Zaas stated that appellant's symptoms and physical findings were essentially the same as when he examined appellant on March 28, 1997 and that it was his opinion that appellant has a permanent impairment and loss of physical function of her right upper extremity of 58 percent.

As Dr. Zaas had not applied the standards of the A.M.A., *Guides* to his findings, the Office forwarded first his March 28, 1997 report and later his follow-up reports to an Office medical adviser, whom the Office claims examiner instructed to correlate Dr. Zaas' findings with the third edition of the A.M.A., *Guides*. In a report dated July 19, 1997, the Office medical adviser noted that wrist extension of 45 degrees equated to a 3 percent impairment and wrist flexion of 30 degrees equated to a 5 percent impairment. He further found that 18 degrees of radial deviation equated to a 5 percent impairment and that 5 degrees of ulnar deviation equated

---

<sup>7</sup> Pursuant to FECA Bulletin No. 89-30 (issued September 29, 1989), the Office claims examiner instructed the Office medical adviser to use the third edition of the A.M.A., *Guides* for calculating the degree of physical impairment.

<sup>8</sup> Dr. Zaas again noted that appellant had weakness of the right hand, cold sensitivity, stiffness of the fingers of the right hand, numbness of the radial four fingers of her right hand, and pain that started at her wrist but spread all the way up her arm to her shoulder, increasing in recent years. He noted that examination revealed a ¼ inch atrophy of the right forearm and that the right wrist measured slightly more than 3/8 inch greater in girth than the left. The right radial pulse was absent and there was palpable coldness of all of the fingers of the right hand, particularly on the radial side. Capillary return on the radial half of the right side was poor and appellant complained of hypesthesia of the right thumb, index finger, long finger and ring finger. Grip strength, particularly thumb-finger grip, was over 50 percent weaker on the right side than the left. Appellant also had a slight thenar muscle atrophy in the right hand, and complained of pain with motion of her right shoulder and tenderness of the right scapulo-trapezius muscles. Range of motion testing revealed that dorsiflexion of the right hand was limited to 45 degrees and palmar flexion to 30 degrees. Radial deviation was carried out to approximately 18 degrees, but ulnar deviation was only 5 degrees. Pronation and supination of the right elbow were both carried out to 80 degrees. Dr. Zaas commented that appellant had significant arterial insufficiency distal to the right wrist due to the blocked radial artery, adversely affecting physical functions of the entire right upper extremity. The physician also noted that in the past two or three years, appellant's grip strength weakness, stiffness and pain in the right upper extremity had all gradually worsened. Dr. Zaas concluded that appellant had a 58 percent permanent impairment and loss of physical function of her right upper extremity.

to a 20 percent impairment, for a total impairment for range of motion of 33 percent. The Office medical adviser further allotted appellant a 20 percent permanent impairment of the right wrist for swelling, pain and diminished circulation of the radial artery, for a total permanent impairment rating of 53 percent, or, an additional 16 percent over appellant's prior impairment rating of 37 percent. In evaluating the August 22 and October 20, 1997 follow-up reports of Dr. Zaas, the Office medical adviser correctly noted that as Dr. Zaas specifically stated that appellant's condition remained essentially the same as noted in his March 28, 1997 report, considered by the Office in awarding appellant an additional 16 percent permanent impairment, the reports provided no basis upon which to modify the August 4, 1997 decision.

It is appellant's burden to submit sufficient evidence to establish his claim. While Dr. Zaas indicated that appellant had a 58 percent right upper extremity impairment, he did not indicate what tables and/or figures he utilized to reach this conclusion. There is, therefore, no medical evidence establishing that appellant has greater than a 53 percent impairment, for which she received a schedule award.

The decisions of the Office of Workers' Compensation Programs dated January 20, 1998 and August 4, 1997 are hereby affirmed.

Dated, Washington, D.C.  
January 18, 2000

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member