

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA S. WEAKLEY and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Yuma, AZ

*Docket No. 98-1773; Submitted on the Record;
Issued January 7, 2000*

DECISION and ORDER

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

The issue is whether appellant has more than a six percent permanent impairment of her bilateral upper extremities for which she received a schedule award.

The Board had duly reviewed the case on appeal and finds that appellant has no more than a six percent permanent impairment of her bilateral upper extremities, for which she received a schedule award.

On January 22, 1997 appellant, then a 43-year-old purchasing agent, filed a claim alleging that she developed bilateral epicondylitis due to her federal employment duties. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral epicondylitis and overuse syndrome. On September 22, 1997 appellant filed a claim for a schedule award. On March 9, 1998 the Office granted appellant a schedule award for a six percent permanent impairment of her bilateral upper extremities, or three percent for each arm.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² 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 for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *James A. England*, 47 ECAB 115 (1995).

In support of her claim for a schedule award, appellant submitted medical reports from her treating physicians. In a report dated October 27, 1997, submitted in response to an Office request that appellant be evaluated for schedule award purposes, Dr. Ram R. Krishna, an orthopedic surgeon, stated that at the time of his examination appellant continued to have pain on both lateral epicondyle areas and that dorsiflexion of the wrist against resistance was painful. The physician further noted some localized tenderness without much swelling but added that appellant had difficulty doing a firm handshake. Dr. Krishna stated that appellant was benign neurologically and that her sensory and motor functions were intact. He further noted appellant's reports that she is unable to pick up glasses or coffee cups or open doors using only one hand, and that she cannot pull objects such as a rope or lawnmower, and cannot lift objects weighing more than 30 to 40 pounds. Dr. Krishna further noted appellant's complaints of numbness along the ulnar nerve distribution and recommended that appellant get a neurology consultant to rule out an ulnar nerve tardy. He added, however, that he was not sure if any ulnar nerve condition would be work related. In conclusion, Dr. Krishna stated that appellant had fairly good range of motion, but because of the pain involved, he would rate her as five percent disabled.

By letter dated January 5, 1998, the Office acknowledged its receipt of Dr. Krishna's report, but noted that the physician had not provided a date of maximum medical improvement, nor had he completed the schedule evaluation form provided, with specific references to the A.M.A., *Guides*. The Office asked Dr. Krishna to complete and submit this form.

Dr. Krishna completed the requested form on January 6, 1998, indicating that appellant had reached maximum medical improvement on October 24, 1997. He further noted that appellant had bilateral pain localized to the lateral epicondyle with pain on dorsiflexion of the wrist, bilateral weakness of grip and strength, without atrophy, but had normal range of motion bilaterally.

The Board has held that if an examining physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the record and apply the A.M.A., *Guides* to the examination findings reported by the examining physician.⁴ In his reports dated October 27, 1997 and January 6, 1998, Dr. Krishna noted that appellant had some weakness and pain, but full range of motion and estimated that appellant had a five percent permanent impairment due to her pain. However, the physician did not explain fully the calculations behind the conclusion that appellant had a five percent permanent impairment, with specific reference to the A.M.A., *Guides* for each calculation.

An Office medical adviser reviewed these findings on February 4, 1998 and applied the A.M.A., *Guides*.⁵ He found that appellant reached maximum medical improvement on October 27, 1997 and that, while appellant does not have any impairment for loss of motion or weakness for the purposes of a schedule award, she does have ratable bilateral arm pain. Based on Dr. Krishna's description of appellant's pain, the Office medical adviser graded the severity

⁴ *Lena P. Huntley*, 46 ECAB 643 (1995).

⁵ A.M.A., *Guides* (4th ed. 1993).

of appellant's pain as the "maximal" Grade 3 under Table 11, page 48, or as "decreased sensibility with or without abnormal sensation or pain, which interferes with activity." Such a grade represents a 25 to 60 percent sensory deficit of the involved nerve. The Office medical adviser chose the greatest percentage deficit allowed by such a grade, or 60 percent. Following the procedure set forth at Table 11, page 48, he multiplied 60 percent by the maximum impairment value of the involved radial nerves, or 5 percent according to Table 15, page 54, thereby arriving at a 3 percent impairment of both the right and left upper extremities due to sensory deficit or pain.

The Board has reviewed the calculations of the Office medical adviser and finds that the Office medical adviser properly calculated each of appellant's impairments pursuant to the A.M.A., *Guides* and properly concluded that appellant has a three percent permanent impairment of each arm, or a total of six percent permanent impairment. While Dr. Krishna further noted the possibility of ulnar nerve damage, he did not provide a conclusive diagnosis with respect to any additional condition and further noted that he could not say whether any ulnar nerve condition would be employment related.

The decision of the Office of Workers' Compensation Programs dated March 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 7, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member