

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON L. BECZKA and U.S. POSTAL SERVICE,
POST OFFICE, Palatine, IL

*Docket No. 99-44; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained greater than a 10 percent permanent impairment of the right arm and a 10 percent permanent impairment of the left arm for which she received a schedule award.

On April 12, 1994 appellant, then a 33-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that the burning and tingling in her hands and pain in her wrist, neck, shoulders and back were due to her job duties. The Office of Workers' Compensation Programs accepted the claim for mild bilateral carpal tunnel syndrome and authorized left bilateral carpal tunnel release on August 24, 1994 and authorized right carpal tunnel release on September 18, 1996.

Appellant subsequently filed a claim for a schedule award.

By letter dated April 29, 1998, the Office requested that Dr. Eugene P. Lopez, an attending Board-certified orthopedic surgeon, provide an impairment rating using the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (fourth edition) in his determination.

In a report dated May 7, 1998, Dr. Lopez, based upon a physical examination, indicated that appellant had "symmetric grip strength" and the vascular and neurologic tests were normal. He noted that appellant "underwent carpal tunnel release over one year ago," that she had reached maximum medical improvement and that she had "finished a functional capacity evaluation" and was at the office "to have disability forms filled out."

In the disability rating report dated May 7, 1998, Dr. Lopez noted right dorsiflexion of 0/50 degrees, left dorsiflexion of 0/50 degrees, right palmar-flexion of 0/50 degrees and left palmar-flexion of 0/65 degrees. Dr. Lopez indicated that appellant's radial deviation and ulnar deviation in her right and left wrist were within normal limits. Next, he accorded appellant a 42

percent impairment of the arm due to atrophy, pain, discomfort or weakness, “according to F.C.E. [functional capacity evaluation.]” Next, Dr. Lopez concluded that appellant had a 36 to 38 percent impairment of her right arm and a 36 to 42 percent impairment of her left arm. Lastly, he indicated May 7, 1998 as the date of maximum medical improvement (MMI).

In a June 22, 1998 report, the Office medical adviser concluded that appellant had a 0 percent permanent impairment of her right upper extremity with the date of MMI as April 31, 1997 and a 10 percent permanent impairment of her left upper extremity with the date of MMI as January 7, 1995. The Office medical adviser based his opinion upon the medical reports of Dr. Lopez and the A.M.A., *Guides*. Specifically, the Office medical adviser noted:

“As of May 7, 1998 Dr. Lopez reported that [appellant] was doing very well with minimal subjective complaints of pain. However, she does have intermittent symptoms that appear to be exacerbated with repetitive activity. Physical examination demonstrated symmetric grip strength. The two-point discrimination was normal and there was no report of any thenar atrophy. Key pinch was within normal limits and the range of motion was measured and found to be relatively normal.

“According to Table 16, p. 3/57 of the A.M.A., [*Guides*] [sic] (fourth edition), 10 percent upper extremity (PPI) [permanent partial impairment] is awarded to each wrist for the mild residual of median entrapment at the wrist. Date of MMI is six months following the procedure in each case.

“In his letter, Dr. Lopez awards 36 to 38 percent for the right and 36 to 42 percent PPI for the left upper extremity. He references an (FCE) when making this award. The only FCE in the medical record, which I located was from March 20, 1995, which is prior to the release of the right side. Thus, I do not believe it is an accurate representation of the claimant’s current status and should be disregarded.”

On August 27, 1998 the Office issued an award of compensation of 10 percent permanent loss of use of the left arm and a 10 percent permanent loss of use of the right arm. The award for both arms ran from April 30, 1997.

The Board finds that this case is not in posture for a decision.

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 A.M.A., *Guides*³ as a

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides*.

standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.⁵ All factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment, which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁶ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁷

In this case, the Office accepted appellant's claim for mild bilateral carpal tunnel syndrome and authorized right and left bilateral carpal tunnel release surgery.

The relevant medical evidence includes a report dated May 7, 1998, in which Dr. Lopez noted right dorsiflexion of 0/50 degrees, left dorsiflexion of 0/50 degrees, right palmar-flexion of 0/50 degrees and left palmar-flexion of 0/65 degrees and that the ulnar and radial deviation in the right and left wrists were within normal limits. Dr. Lopez concluded that appellant had an additional impairment rating of 42 percent in the arm due to pain, atrophy, weakness or discomfort based upon a functional capacity evaluation and then recommended an impairment rating of 36 to 38 percent for the right upper extremity and 36 to 42 percent for the left upper extremity. In addition, Dr. Lopez noted May 7, 1998 as the date of MMI. Despite the Office's notice in its August 20, 1998 letter that the A.M.A., *Guides* should be used to rate appellant's permanent impairment, Dr. Lopez did not indicate whether, in arriving at his recommended percentage of impairments, he applied the A.M.A., *Guides*. If Dr. Lopez did use the A.M.A., *Guides*, he did not explain how it was applied to arrive at his recommended percentages. It was,

⁴ *James A. England*, 47 ECAB 115 (1995).

⁵ *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁷ *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

therefore, proper for an Office medical adviser to apply the criteria of the A.M.A., *Guides* to Dr. Lopez's findings on examination.⁸

The Office medical adviser concluded that appellant had mild residual median entrapment of the wrist based upon the findings given by Dr. Lopez, which include symmetric grip strength, normal two-point discrimination, no report of thenar atrophy, key pinch was within normal limits and the range of motion was found to be relatively normal. The A.M.A., *Guides* state that a 10 percent impairment rating is assigned for a mild degree of median entrapment at the wrist. He determined that the only functional capacity evaluation to which Dr. Lopez referred was dated March 20, 1995 and that it was not an accurate representation of appellant's current status as it was prior to appellant's right carpal tunnel release. However, the Office medical adviser failed to include appellant's loss of range of motion in his calculations of her impairment. Furthermore, the Office medical adviser disagreed with Dr. Lopez regarding the date of MMI since Dr. Lopez indicated the date as May 7, 1998 and the Office medical adviser concluded that the date should be considered six months after the surgery was performed. However, the dates he noted are not six months subsequent to appellant's carpal tunnel release surgery. Thus, as the report of the medical adviser failed to consider appellant's range of motion loss and clarification is needed regarding the date of maximum medical improvement, the case must be remanded for a determination of appellant's date of MMI and to consider her range of motion loss in determining the degree of impairment for a schedule award.

The case will, therefore, be remanded to the Office for an Office medical adviser to recalculate the percentage of impairment in appellant's right and left arms as well as determine the date of MMI.

⁸ See *Michael C. Norman*, 42 ECAB 768 (1991).

The decision of the Office of Workers' Compensation Programs dated August 27, 1998 is hereby set aside and remanded to the Office for further proceedings consistent with this opinion.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member