U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE BURDEN and DEPARTMENT OF THE ARMY,
ARMY MATERIEL DEPOT, Anniston, AL

Docket No. 99-615; Submitted on the Record;
Issued July 27, 2000

DECISION and ORDER

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

The issue is whether appellant has established that she has greater than a three percent permanent impairment for loss of use of the right hand, for which she received a schedule award.

On January 23, 1995 appellant, a 49-year-old explosives operator, filed a claim for benefits, alleging that she sustained a carpal tunnel condition due to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for right carpal tunnel syndrome on June 30, 1995.

On November 2, 1995 Dr. Richard J. Fix, a Board-certified plastic surgeon, performed carpal tunnel release surgery on appellant's right hand.

In a report dated January 4, 1996, Dr. Fix stated:

> "[Appellant] has had improvement of the pain but she still has dorsal radial pain, which is the same as she had before and has not gone away. X-rays did not reveal any arthritic problems. She has some numbness of the thumb, which is not improved. She has not been back to work.
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> "PHYSICAL EXAMINATION: She has improved sensation of the index, long and ring finger. She has some numbness of the thumb. She has no tenderness of the wrist.... In view of absence of any intersection syndrome or first dorsal compartment syndrome, that she has a distal forearm pain of unknown etiology."

Dr. Fix released appellant to return to work on January 8, 1996.

In a memorandum and schedule award work sheet dated May 30, 1996, Dr. Phillip W. Horn, Board-certified in internal medicine and an Office medical adviser, found that appellant had a 20 percent permanent impairment based on loss of use of his right upper extremity.

Relying on Dr. Fix's findings and conclusions, Dr. Horn stated that the objective residual disability could not be calculated at more than a moderate degree pursuant to Table 16, page 57 of the American Medical Association (A.M.A.,) *Guides for the Evaluation of Permanent Impairment* (fourth edition), [the *Guides*].

In a report dated July 1, 1996, Dr. Fix opined that appellant had a 52 percent permanent partial impairment of the right hand, pursuant to the A.M.A., *Guides*.

On July 16, 1996 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of her right hand.

To resolve the conflict in medical opinion between Dr. Horn and Dr. Fix, the Office referred appellant to Dr. T. Clayton Davie, Board-certified neurosurgeon, for an independent, referee impairment evaluation on March 24, 1998.[1] Dr. Davie concluded that appellant had a three percent permanent impairment of the right hand.

Dr. Davie opined:

> "Her motor examination reveals excellent intrinsic motor function and strength bilaterally in both hands. There may be very minimal slight thenar atrophy on the right. However, there is no adductor atrophy of the thumb on either side. There is no [atrophy] of the interossei or the hypothenar eminence. All motor function is intact in both hands, including all intrinsic muscles, interossei and lumbricals. She has an excellent hand grip bilaterally. She has excellent abduction and [extension] function of the fingers and wrists.... Her sensory exam[ination] on the right is totally unreliable. She alleges a decreased pinprick sensation over the dorsal and volar aspect of the entire right hand, distal to the wrist. This would effect the radial, ulnar and median nerves and is not physiological and not valid in my opinion.... I find no significant functional impairment in either right or left hand."

Dr. Davie found that appellant's degree of permanent impairment of the right upper extremity due to loss of function from decreased strength was one percent. He determined that the degree of permanent impairment of the upper extremity due to loss of function resulting from sensory deficit, pain or discomfort was four percent and that appellant had a zero impairment resulting from appellant's digits.

On April 15, 1998 the Office granted appellant a schedule award for a three percent permanent impairment for loss of use of the right hand for the period May 30 to July 20, 1996, for a total of 7.32 weeks of compensation.

The Board finds that the case is not in posture for decision

[1] The Board notes that the Office scheduled an independent medical examination with two other referee physicians prior to Dr. Davie. However, the conclusions of the first physician were rejected by the Office and the Office scheduled a third referee examination after the second physician failed to submit his report within a reasonable time frame.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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 loss of use.[4] However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[5]

In the present case, there is a conflict in the medical evidence between Dr. Horn, the Office medical adviser and Dr. Fix, appellant's treating physician, as to the percentage of permanent impairment to which appellant is entitled based on his accepted right carpal tunnel condition.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."[6]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. When the Office secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.[7]

In the instant case, the Office determined that appellant had a three percent permanent impairment of the right hand by adopting the opinion of Dr. Davie, the independent medical examiner. The Board, however, finds that Dr. Davie's opinion is not sufficient to resolve the conflict in medical evidence, as his opinion is not well rationalized and he has not clarified or elaborated the specific background upon which he based his opinion. Specifically, Dr. Davie failed to refer to the applicable tables and standards of the A.M.A., *Guides* on which he based his findings and conclusions. Accordingly, the Board will remand the case to the Office for referral

[2] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.304.

[4] 5 U.S.C. § 8107(c)(19).

[5] *Thomas D. Gunthier,* 34 ECAB 1060 (1983).

[6] Section 8123(a) of the Act provides in pertinent part, "[i]f there is a 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;" *see Dallas E. Mopps,* 44 ECAB 454 (1993).

[7] *Terrance R. Stath,* 45 ECAB 412 (1994).

to Dr. Davie for clarification and elaboration of his opinion. On remand, the Office should instruct Dr. Davie to provide a well-rationalized opinion, to specifically refer to the applicable tables and standards of the A.M.A., *Guides* in making his findings and conclusions and in rendering his impairment rating and to clearly indicate the specific background upon which he based his opinion. After such development, as it deems necessary, the Office shall issue a *de novo* decision.

The Office's decision of April 15, 1998 is, therefore, set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member