

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELISESO SALGADO and U.S. POSTAL SERVICE,
POST OFFICE, Bayonne, NJ

*Docket No. 99-1605; Submitted on the Record;
Issued July 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had a 10 percent permanent impairment of the left arm.

On January 20, 1994 appellant, then a 49-year-old letter carrier, slipped on icy steps and fell, landing on his left elbow. The Office accepted appellant's claim for contusion of the left elbow and ulnar neuritis. Appellant stopped working on August 30, 1994 and returned to light-duty work on October 3, 1994. The Office authorized buy back of leave for the period August 30 through September 21, 1994 and paid temporary total disability compensation for the period September 22 through October 3, 1994.

In a December 16, 1997 decision, the Office issued a schedule award for a 10 percent permanent impairment of the left arm. Appellant requested a hearing before an Office hearing representative, which was conducted on October 26, 1998. In a February 2, 1999 decision, the Office hearing representative found that the weight of the medical evidence established appellant had a 10 percent permanent impairment of the left arm. She, therefore, affirmed the Office's December 16, 1997 decision.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Albert B. Thrower, a Board-certified orthopedic surgeon, for an examination and second opinion. In a May 20, 1996 report, Dr. Thrower stated appellant had mild tenderness in the elbow area along the ulnar nerve. He found normal motion of the elbow but mild atrophy of the left hand involving the intrinsic and hypothenar muscles of the hand. Dr. Thrower did not detect any tenderness along the median nerve. He estimated that grip strength was 30 to 40 percent of normal. Dr. Thrower diagnosed left ulnar neuropathy. He referred appellant for an electromyogram (EMG). In a June 7, 1996 report, Dr. Thrower stated that the EMG showed an ulnar nerve compression at the elbow. He stated that, if appellant did not undergo surgery, he would have persistent pain on a permanent basis. Dr. Thrower commented that appellant did not have any signs of neuropathic changes in the hand.

Appellant's attorney submitted a May 3, 1995 report from Dr. David Weiss, an osteopath, who indicated that examination showed weakness over the fourth and fifth digits of the left hand and atrophy of the lower arm muscles. He indicated that appellant's range of motion in the elbow was 145 degrees flexion, 80 degrees pronation and 80 degrees supination. Dr. Weiss stated that appellant on grip strength had 26 kilograms of force on the right hand but 2 kilograms of force in the left hand. He diagnosed post-traumatic left ulnar nerve neuropathy at the cubital tunnel. Dr. Weiss concluded that appellant had a 2 percent permanent impairment due to a Grade I deficit of the ulnar nerve and a 30 percent permanent impairment due to decreased grip strength for a total impairment of 32 percent.

The Office requested an additional report from Dr. Thrower on the extent of appellant's permanent impairment. In a November 7, 1997 report, Dr. Thrower indicated that appellant's ranges of motion in the left elbow were 150 degrees flexion, 80 degrees pronation and 80 degrees supination. He again noted appellant had slight atrophy of the intrinsic muscles and hypothenar muscles of the left hand, which correlated with ulnar neuropathy. Dr. Thrower commented that grip strength was tested by manual methods only and was felt to be approximately 40 percent of normal. He concluded that appellant had a 10 percent permanent impairment of the left arm, based on a mild ulnar neuropathy of the left arm.⁴

Dr. Weiss concluded that appellant had a 30 percent permanent impairment due to loss of strength based on appellant decreased grip strength as measured by a Jamar Dyanometer. He only gave one result from grip strength testing. The A.M.A., *Guides* state that at least three trials of grip testing are performed during an examination and the results are compared for reliability,

³ Thomas P. Gauthier, 34 ECAB 1060, 1063 (1983).

⁴ A.M.A., *Guides*, p. 57, Table 16.

shown by a less than 20 percent variation among the test results.⁵ Dr. Weiss' report does not show that he carried out the grip testing in a manner to demonstrate the reliability of the test results. He also did not show that he used the formula set forth in the A.M.A., *Guides* to convert the results of grip testing into a permanent impairment percentage.⁶ Dr. Weiss, therefore, did not provide information necessary to support his calculation of appellant's permanent impairment.

Dr. Thrower concluded that appellant had a mild neuropathy of the ulnar nerve at the elbow. However, he did not explain how he concluded appellant had a mild neuropathy in the face of his finding of atrophy of the muscles of the left arm below the elbow and his estimate that appellant's strength in the left arm was 40 percent of normal, which, under the A.M.A., *Guides*, would be a 20 percent permanent impairment of the arm.⁷ Dr. Thrower did not perform any of the tests performed by Dr. Weiss to support his findings on the strength of appellant's arm. His report, therefore, lacks sufficient rationale and test results to support his conclusion that appellant had a 10 percent permanent impairment of the arm.

Dr. Weiss and Dr. Thrower made similar findings in their examination of appellant but reached different conclusions on the extent of appellant's permanent impairment. Each provided reports on appellant's permanent impairment that were deficient in some respect. The case will, therefore, be remanded to resolve in the conflict in the medical evidence on the extent of the permanent impairment of appellant's left arm. On remand the Office should refer appellant to an appropriate impartial medical specialist. The impartial specialist should be requested to provide a diagnosis of appellant's condition, an estimate of the extent of appellant's permanent impairment of the left arm and the test results and findings used in making his estimate of appellant's permanent impairment. After further development as it may find necessary, the Office should issue a *de novo* decision.

⁵ A.M.A., *Guides*, p. 64.

⁶ A.M.A., *Guides*, p. 65, Tables 32, 34.

⁷ A.M.A., *Guides*, p. 65, Table 34.

The decision of the Office of Workers' Compensation Programs, dated February 2, 1999, is hereby set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, D.C.
July 20, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member