

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHESTER T. WAWRZASZEK and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, IL

*Docket No. 98-2229; Submitted on the Record;  
Issued May 12, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to a greater than 43 percent permanent impairment of the right upper extremity for which he has received a schedule award.

On February 2, 1996 appellant, then a 68-year-old former federal employee, filed a claim for compensation alleging that his carpal tunnel syndrome was caused by factors of federal employment. The Office of Workers' Compensation Programs accepted the claim on April 11, 1996.

On May 20, 1996 appellant filed a claim for a schedule award. The employing establishment stated that he retired on November 2, 1994.

On September 17, 1996 Dr. Slobodan D. Vucicevic, Board-certified in orthopedic surgery, stated that appellant had a 50 percent permanent impairment "across the board" as a result of bilateral carpal tunnel syndrome. He noted that appellant had right-hand work-related carpal tunnel syndrome and left-hand idiopathic carpal tunnel syndrome. Dr. Vucicevic noted: "Jaymar dynamometer revealed a 12, 6 and 12 kg forces on right.... There is thinning of the thenar eminence noted some atrophic changes are present. There is weak pinch grip and opposition of the thumb. There is clear presentation of right carpal tunnel syndrome."

In a medical report dated December 9, 1996, Dr. Vucicevic stated that appellant had reached maximum medical improvement. He also stated:

"[Appellant] is considered to have 50 percent permanent impairment of the upper extremity due to loss function from decreased strength, sensory deficit, pain or discomfort. [Appellant] will need carpal tunnel release, however, he is not medically cleared to have surgery at this point and he may never reach the level stable enough to undergo out patient surgery."

On May 8, 1997 the Office accepted appellant's claim for right carpal tunnel syndrome. The Office stated that the letter superseded the August 11, 1996 bilateral carpal tunnel syndrome acceptance letter.<sup>1</sup>

On July 2, 1997 the Office referred appellant's medical records and a statement of accepted facts to Dr. Carlo Bellabarba, an orthopedic surgeon, to determine appellant's permanent partial impairment of the right upper extremity and the date of maximum medical improvement.

In a medical report dated July 4, 1997, Dr. Bellabarba stated that he had reviewed appellant's medical records including Dr. Vucicevic's April 22, 1997, December 9, 1996 and April 19, 1994 medical reports which described soreness at the base of the right thumb, positive Tinel's sign and Phalen's test and slightly decreased sensation along the medial nerve distribution. Grip strength on the right was decreased with respect to the left side and thenar atrophy was also noted. He noted that the electromyography (EMG) and nerve conduction studies from June 15, 1994 confirmed carpal tunnel syndrome with possible C6 radiculopathy. Dr. Bellabarba noted that in accordance with Table 16 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> "right upper extremity permanent impairment is 20 percent due to symptoms of medial nerve entrapment at the wrist which are moderate in severity. This is based mainly on weakness of grip, but also on subjective numbness, mild sensory loss and thenar atrophy." He stated that appellant's date of maximum medical improvement was April 19, 1994. Dr. Bellabarba recommended a 20 percent permanent impairment of the right upper extremity.

On August 13, 1997 the Office awarded appellant an 11 percent permanent impairment of the right hand. The Office noted that, since he had been awarded a 9 percent permanent impairment, that amount was subtracted from the 20 percent recommended by Dr. Bellabarba, thus resulting in an 11 percent permanent impairment award.

In a letter received by the Office on September 16, 1997, appellant requested reconsideration of the Office's decision.<sup>3</sup>

On October 17, 1997 the Office referred the case record to Dr. David H. Garelick, an orthopedic surgeon, to reevaluate appellant's claim on the basis that Dr. Bellabarba's report was vague with respect to whether it had considered Dr. Vucicevic's September 17, 1996 report.

In a medical report dated October 20, 1997, Dr. Garelick stated that he had reviewed Dr. Vucicevic's reports noting soreness on the base of the thumb, a positive Tinel's sign and Phalen's test, thenar atrophy and decreased sensation in the distribution of the median nerve. He noted: "Extrapolating from the medical record, the decreased sensation in the medial nerve

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<sup>1</sup> The record fails to disclose an acceptance letter of August 11, 1997. However, the Office accepted appellant's claim for bilateral carpal tunnel syndrome on April 11, 1997.

<sup>2</sup> A.M.A., *Guides*, 57, Table 16 (4th ed. 1993).

<sup>3</sup> Appellant's wife authored the reconsideration request because of appellant's carpal tunnel syndrome condition.

distribution allows for 19 percent upper extremity permanent impairment according to [T]able 15 and [T]able 11 ... of the A.M.A., *Guides*.” He also noted Dr. Vucicevic’s report regarding significant decreased grip strength tested with a Jamar dynamometer with an average of 10 kg which is equivalent to a 78 percent strength loss index according to Table 32 ... and Table 34 ... of the A.M.A., *Guides*. This loss of grip strength awards an additional 30 percent upper extremity permanent impairment.” Dr. Garelick then used the Combined Values Chart to determine that the permanent partial impairment for appellant’s right upper extremity was 43 percent. He stated that the date of maximum medical improvement was April 19, 1994.

By decision on December 15, 1997, the Office issued an award of compensation for an additional 23 percent permanent impairment of the right upper extremity. The Office noted: “You were previously awarded a schedule award for 20 percent: this award represents an additional 23 percent for a total percentage of 43 percent.”

The Board finds that appellant has not established that he is entitled to a greater than 43 percent permanent impairment of the right upper extremity.

Under section 8107 of the Federal Employees’ Compensation Act<sup>4</sup> and section 10.304 of the implementing federal regulations,<sup>5</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 for all claimants the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.<sup>6</sup>

In this case, the Office accepted appellant’s right carpal tunnel syndrome. Dr. Garelick, an Office consultant and an orthopedic surgeon, relied on Dr. Vucicevic’s medical findings and referenced those findings against the A.M.A., *Guides* (4th ed. 1993).<sup>7</sup> He reviewed Dr. Vucicevic’s reports noting soreness on the base of the thumb, a positive Tinel’s sign and Phalen’s test, thenar atrophy and decreased sensation in the distribution the median nerve. Dr. Garelick then extrapolated from the medical record appellant’s decreased medial sensation which he determined was a 19 percent upper extremity permanent impairment and referenced the appropriate tables in the A.M.A., *Guides*.<sup>8</sup> He also noted appellant’s decreased grip strength which he found was equivalent to a 78 percent strength loss index in accordance with the A.M.A., *Guides*<sup>9</sup> which he properly noted increased the schedule award an additional 30 percent.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 20 C.F.R. § 10.304.

<sup>6</sup> *James A. England*, 47 ECAB 115 (1995).

<sup>7</sup> See *James E. Jenkins*, 39 ECAB 860 (1988). Further, Chapters 1 and 2 of the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

<sup>8</sup> A.M.A., *Guides*, 54, Table 15; 48, Table 11.

<sup>9</sup> *Id.*, 65, Table 32 and Table 34.

Dr. Garelick then referenced the Combined Values Chart to determine appellant's overall permanent impairment rate of 43 percent. He properly noted that the date of maximum medical improvement was April 19, 1994. The Office, noting that appellant had been awarded a schedule award for 20 percent and increased appellant's award by 23 percent for a total award of 43 percent for appellant's right upper extremity impairment. The Board finds that the weight of the medical evidence is represented by the medical opinion of Dr. Garelick who correlated Dr. Vucicevic's findings with the A.M.A., *Guides* and arrived at a 43 percent permanent impairment.

The medical evidence of record, therefore, does not establish more than a 43 percent permanent impairment to the right upper extremity in this case.

The decision of the Office of Workers' Compensation Programs dated December 15, 1997 is affirmed.

Dated, Washington, D.C.  
May 12, 2000

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member