

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARA K. DANNER and FEDERAL JUDICIARY,
CLERK OF THE U.S. DISTRICT COURT, Sacramento, CA

*Docket No. 99-2323; Submitted on the Record;
Issued November 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained more than a 60 percent loss of use of the right arm and a 60 percent loss of use of the left arm for which she received schedule awards.

The Office of Workers' Compensation Programs accepted appellant's claim for carpal tunnel syndrome and reflex sympathetic dystrophy.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 60 percent loss of use of the right arm and a 60 percent loss of use of the left arm.

In a report dated March 9, 1999, a referral physician, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon acting as an Office medical consultant, considered appellant's history of injury, reviewed appellant's medical records which included reports of appellant's attending physician, Dr. John F. Kirby, a Board-certified physiatrist, and diagnosed bilateral reflex sympathetic dystrophy of the upper extremities.¹ He found that appellant had significant diffused pain in both upper extremities which interfered with function. Dr. Harris also found that appellant had diffused patchy muscle weakness and atrophy, which was secondary to pain and disuse. He concluded that appellant's impairment could best be rated by pain interfering with function.

Dr. Harris stated that appellant had Grade 3 pain/decreased sensation which interfered with function 60 percent according to Table 11, page 48, of the entire right upper extremity (100 percent) according to Figure 2, page 18, which resulted in a 60 percent impairment of the right upper extremity. Dr. Harris found that appellant had a Grade 3 pain/decreased sensation which interfered 60 percent with function according to Table 11, page 48 of the entire left upper

¹ The Board notes that Dr. Kirby did not provide an overall impairment rating based on his range of motion findings. Thus, the Office properly referred the case to its medical consultant for a correlation of Dr. Kirby's findings with the A.M.A., *Guides*.

extremity (100 percent) according to Figure 2, page 18, which resulted in a 60 percent impairment of the left upper extremity.

By decision dated June 28, 1999, the Office granted appellant an award for 60 percent loss of use of the right arm and 60 percent loss of use of the left arm for the period from June 20, 1999 to August 22, 2006.

The schedule award provision of the Federal Employees' Compensation Act² provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁴

In the present case, in his March 9, 1999 report, although Dr. Harris did not state that he used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994) in assessing appellant's impairment, and the Board requires that a physician properly use the A.M.A., *Guides* for that purpose,⁵ Dr. Harris' report is probative because he referred to tables and page numbers which are consistent with the A.M.A., *Guides* (4th ed. 1994). Further, he explained his findings for a 60 percent impairment to each arm based on a Grade 3 pain interfering with function using Table 11, page 58 and Figure 2, page 18 as listed in the A.M.A., *Guides* (4th ed. 1994) which are rational and proper. No other doctor in the record made any rating for a schedule award. Dr. Harris' opinion therefore establishes that appellant had a 60 percent loss of use of both the right and left arms.⁶

² 5 U.S.C. § 8107 *et seq.*

³ *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

⁴ *Arthur E. Anderson*, *supra* note 3 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁵ *See Paul R. Evans*, 44 ECAB 646, 651; *see Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁶ Moreover, a schedule award for approximately six years was appropriate as pursuant to 5 U.S.C. §§ 8107(a) and (c), appellant is entitled to 66 2/3 percent of his monthly pay for 60 percent of 312 weeks for each arm. Since according to the Office's records appellant was receiving temporary total disability benefits prior to the issuance of the schedule award, at the expiration of the schedule award the Office has the obligation to resume payment of compensation for temporary total disability until such time that it proves that appellant is no longer totally disabled. *See Goldie Washington*, 31 ECAB 239 (1979).

The decision of the Office of Workers' Compensation Programs dated June 28, 1999 is hereby affirmed.

Dated, Washington, DC
November 13, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member