

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM GURECKI and U.S. POSTAL SERVICE,
POST OFFICE, Woodbury, NJ

*Docket No. 99-2570; Submitted on the Record;
Issued November 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent permanent impairment of his left and right arms, for which he received a schedule award.

The Board has duly reviewed the case record and finds that appellant has not established that he is entitled to a greater schedule award.

This is the second appeal of this case. Appellant previously filed an appeal to the Board of a decision issued by the Office of Workers' Compensation Programs on April 4, 1995, for a schedule award for a 10 percent permanent impairment of his right arm, based on appellant's work-related bilateral carpal tunnel syndrome.

By decision dated April 3, 1998, the Board remanded the case to the Office to resolve a conflict in the medical opinion evidence. The Board noted that the April 4, 1995 schedule award was based on the Office medical adviser's determination that appellant had a 10 percent impairment of his right arm and no ratable impairment of his left arm. Dr. David Weiss, an osteopath, had determined in a report of record that appellant had a 20 percent impairment in each arm. The Board therefore found a conflict in medical opinion concerning the extent of appellant's impairment, which required resolution.

On remand, the Office referred appellant to Dr. Charles Kososky, a Board-certified neurologist, to resolve the conflict in the medical opinion evidence. Dr. Kososky, in a narrative report dated June 11, 1998, noted appellant's history, reviewed the medical evidence of record and reported his own clinical findings on the extent of the permanent impairment of appellant's upper extremities. On examination, he concluded that there was no evidence of restricted movement in appellant's hands, wrists, elbows or shoulders and no evidence of atrophy of the intrinsic hand or forearm muscles. Dr. Kososky found that the electrodiagnostic studies were consistent with sensory involvement of the median nerves, distal to the carpal canals, which he opined was mild.

Based on his calculations pursuant to Table 11, page 48 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. rev., 1995), Dr. Kososky concluded that appellant had a mild degree of sensory impairment in the median nerve distribution and entrapment site at the wrist or mid nerve palm. He found that the grade of sensory deficit was 25 percent in both upper extremities. Dr. Kososky also found that pursuant to Table 15, the maximum upper extremity impairment due to unilateral sensory deficit was in the realm of 38 percent, involving both median nerve distributions distal to the carpal canal. He concluded, therefore, that appellant had a nine percent permanent impairment in each arm.

The Office medical adviser reviewed Dr. Kososky's findings in a July 22, 1998 report. He applied the alternative method in determining impairment of the upper extremity secondary to entrapment neuropathy in Table 16, page 57 of the A.M.A., *Guides* to the mild neurological impairment in the median nerves reported by Dr. Kososky and found that appellant had a 10 percent impairment in each arm.

By decision dated July 27, 1998, the Office issued a schedule award for 10 percent permanent impairment of the left arm.

Following a hearing held on February 23, 1999 at appellant's request, an Office hearing representative affirmed the July 27, 1998 and April 5, 1995 decisions.

The Board finds that appellant has not established that he has more than a 10 percent permanent impairment of his left and right arms.

Section 8107 of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.³

Dr. Kososky, the impartial medical examiner, concluded that based on his calculations pursuant to Table 11, page 48 of the A.M.A., *Guides*, appellant had a sensory deficit of 25 percent in both upper extremities and that pursuant to Table 15, the maximum upper extremity impairment due to unilateral sensory deficit was in the realm of 38 percent. Dr. Kososky then calculated that 25 percent of 38 was 9.5 percent, which he rounded down a percent. Therefore, Dr. Kososky concluded that appellant had a nine percent permanent impairment of both upper extremities.

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides*.

The Office medical adviser in his July 22, 1998 report applied the alternative method in determining impairment of the upper extremity secondary to entrapment neuropathy in Table 16, page 57 of the A.M.A., *Guides* to the mild neurological impairment in the median nerves reported by Dr. Kososky. He concluded that appellant had a 10 percent impairment in both the left and right upper extremity.

The Board has reviewed the calculations of the Office medical adviser and finds that he properly calculated both of appellant's impairments pursuant to Table 16, page 57 of the A.M.A., *Guides* and properly concluded that appellant had a 10 percent impairment in each arm. While the medical examiner could have simply accepted the findings of Dr. Kososky and rounded his 9.5 percent impairment to 10 percent, his use of an alternative Table, which also resulted in a finding of 10 percent impairment of each extremity, was not in error.

The decision of the Office of Workers' Compensation Programs dated February 23, 1999 is hereby affirmed.

Dated, Washington, DC
November 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member