

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA J. BURDICK and U.S. POSTAL SERVICE,
POST OFFICE, Eau Claire, WI

*Docket No. 99-949; Submitted on the Record;
Issued September 5, 2000*

DECISION and ORDER

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

The issue is whether appellant has more than a three percent impairment of the right upper extremity, for which she received a schedule award.

The Board has duly reviewed the case record and concludes that this case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) have been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

On September 18, 1993 appellant, then a 40-year-old mail carrier, filed an occupational disease claim, alleging that factors of employment caused tingling and aching in her right arm. She stopped work that day and returned on September 20, 1993. The Office accepted that she

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

sustained an employment-related right arm and shoulder strain and cervical nerve entrapment. On June 5, 1998 she filed a claim for a schedule award. By decision dated July 16, 1998, the Office granted appellant a schedule award for a three percent permanent impairment of the right upper extremity for a total of 9.36 weeks of compensation to run from December 6, 1994 to February 9, 1995. The Office based its decision on the June 29, 1998 opinion of Dr. David H. Garelick, an orthopedic surgeon who served as an Office medical adviser.

The relevant medical evidence in this case includes a January 2, 1997 report from Dr. Tuenis D. Zondag, appellant's treating Board-certified family practitioner, who provided a comprehensive report that included hand dynamometry findings. He concluded that she had a six percent impairment of the spine. By report dated June 29, 1998, Dr. Garelick, the Office medical adviser, reviewed Dr. Zondag's findings and concluded that appellant had a three percent permanent impairment of the right upper extremity.

The Board finds that the medical evidence of record does not provide an appropriate basis for calculating the permanent impairment of appellant's right upper extremity due to the employment injury. While Dr. Zondag concluded that appellant had a six percent impairment of the spine, neither the Act nor the implementing federal regulations provide for the payment of a schedule award for loss of use of the back or spine.⁵ Dr. Garelick, in turn, did not provide specific calculations to show how he arrived at his estimate of impairment. The case will therefore be remanded for the Office to obtain a supplementary report from Dr. Garelick to explain his application of the A.M.A., *Guides*.⁶

⁵ See *Pamela J. Darling*, 49 ECAB ____ (Docket No. 96-274, issued January 21, 1998). The Board notes, however, that appellant's accepted conditions include cervical nerve entrapment and, therefore, her right upper extremity could properly be evaluated under section 3.1k of the A.M.A., *Guides*.

⁶ See generally *Francesco C. Veneziani*, 48 ECAB 572 (1997).

The decision of the Office of Workers' Compensation Programs dated July 16, 1998 is hereby vacated and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
September 5, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member