

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA HIGH and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 00-1815; Submitted on the Record;
Issued April 24, 2001*

DECISION and ORDER

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

The issue is whether appellant has greater than a two percent permanent loss of use of her right upper extremity.

The Office of Workers' Compensation Programs accepted that appellant, then a 25-year-old mail processor sustained an injury on December 2, 1998, while lifting trays of mail at work. The claim was accepted for right shoulder and cervical strains. The Office subsequently accepted that appellant had also developed a right wrist condition on or about September 22, 1998 related to her duties as mail processor. The Office combined both cases under one claim number and appellant received appropriate compensation. Appellant began full-time limited-duty work immediately following the December 2, 1998 work incident. She stopped work from March 4 through 17, 1999 and returned to full time-limited duty on March 18, 1999.

On August 11, 1999 Dr. Robert Hall, a Board-certified orthopedic surgeon, from the Department of Hand and Upper Extremity Surgery, evaluated appellant and determined that her work-related conditions had resolved and that she could resume regular duty. On August 27, 1999 the Office requested that Dr. George Wharton, a Board-certified orthopedic surgeon, and appellant's treating physician, review Dr. Hall's report and address the issue of residuals of the work-related injuries and continued work restrictions versus regular work. In a report dated October 14, 1999, Dr. Wharton responded that there was no objective basis to restrict appellant from regular duty as her right shoulder, wrist and cervical strain had resolved. Consequently, the Office proposed to terminate appellant's compensation benefits on November 3, 1999.

On November 29, 1999 appellant filed a claim for a schedule award based on the December 2, 1998 injury. In support, the Office received a functional capacity evaluation dated June 23, 1999 performed under Dr. Wharton's direction by a registered and licensed therapist. The therapist described the results of an upper extremity status screening and provided impairment ratings of 13 percent for the right shoulder and 8 percent for the cervical region.

On January 5, 2000 the Office requested that Dr. Wharton provide a report quantifying impairment of the upper back and neck due to spinal pathology. Specifically, the Office requested an opinion concerning whether there was significant pain, sensory deficit or motor impairment of the upper extremities due to appellant's job-related neck and upper back injury.

On February 24, 2000 an Office medical adviser reviewed the medical evidence and indicated that his recommendations regarding a schedule award were based on the record and the tables of the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*. The Office medical adviser discussed appellant's diagnosis of disc protrusion C5-6 and further related that Dr. Wharton had described sensory deficit and pain in the C6 dermatome on the right. The Office medical adviser determined that, using Table 13, page 51, the impairment rating for sensory deficit or pain was 8 percent. Using Table 11, page 48, he determined that appellant's impairment due to sensory deficit or pain was 26 percent, based on the level of symptoms as Grade 3. The Office medical adviser determined that appellant's maximum impairment was 2 percent obtained by multiplying 8 percent by .26 percent and then rounded the figure. He, therefore, found that appellant's total impairment for the right upper extremity was two percent. The Office medical adviser noted that his impairment rating differed from that of Dr. Wharton's rating in that he multiplied 26 by 8 percent, which equaled 2 percent rounded and that Dr. Wharton apparently used Grade 3 from Table 11 and multiplied 3 times 8 percent, which equaled 24 percent. The Office medical adviser determined that appellant reached maximum medical improvement on January 20, 2000.

On March 3, 2000 the Office issued appellant a schedule award a for two percent permanent loss of use of the right upper extremity.

The Board finds that this case is not in posture for a decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

The Office procedure manual requires a claims examiner to advise any physician, who evaluates permanent impairment to use the A.M.A., *Guides* and to report findings in accordance with those guidelines.⁴ As the A.M.A., *Guides* states: "It is most important that the evaluator

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*,

obtain enough clinical information to characterize the medical condition fully in accordance with the requirements of the [A.M.A.,] *Guides*.... If the current findings are consistent with the results of previous clinical evaluations, they may be compared with the appropriate tables of the A.M.A., *Guides* to determine the percentage of impairment.⁵

In this case, the Office requested that Dr. Wharton, appellant's treating physician evaluate appellant's permanent impairment under the A.M.A., *Guides*, however, the record does not contain a report from Dr. Wharton quantifying impairment of the accepted conditions. The Office medical adviser made brief reference to an impairment rating of 24 percent provided by Dr. Wharton, however, he did not indicate from which report this impairment rating was derived or the clinical findings utilized in determining impairment. The only evidence of record which discusses impairment of the accepted shoulder, neck and upper back conditions is a functional capacity evaluation ordered by Dr. Wharton, performed by a licensed therapist. The June 23, 1999 report from the therapist to whom Dr. Wharton referred appellant carries no probative value in this case since a therapist is not a physician as defined by 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion.⁶ It is unclear whether the Office medical adviser relied on findings contained in the functional capacity evaluation discussed above or in a separate report from Dr. Wharton not currently of record.

Because the record does not contain sufficient clinical information to support a proper schedule award, the Board will set aside the Office's March 3, 2000 decision and remand the case for appropriate development of the medical evidence.⁷ On remand, the Office shall refer appellant to an appropriate medical specialist for an evaluation of each upper extremity in accordance with the protocols set forth in the revised fourth edition of the A.M.A., *Guides*. The Office shall then refer this evaluation to an Office medical adviser for comparison of the clinical findings made therein with the specific impairment criteria set forth in the A.M.A., *Guides* and for an explanation of each impairment found with references to appropriate tables and page numbers. After such further development of the evidence as it considers necessary, the Office shall issue an appropriate final decision on appellant's entitlement to schedule compensation.

Chapter 2.808.5(c) (December 1991).

⁵ A.M.A., *Guides* at page 3.

⁶ *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

⁷ Furthermore, the Office medical adviser in assessing a two percent impairment referred only to sensory deficits or pain of the spinal nerve C6 although impairment due to loss of power or motor deficits should have also been considered. Additionally, the Office medical adviser did not determine impairment for appellant's December 2, 1998 shoulder injury.

The decision of the Office of Workers' Compensation Programs dated March 3, 2000 is set aside and the case remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
April 24, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member