

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA J. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 01-89; Submitted on the Record;
Issued August 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 19 percent permanent impairment of her right arm for which she received schedule awards.

The Board finds that appellant does not have more than a 19 percent permanent impairment of her right arm for which she received schedule awards.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision¹ on October 2, 1996 in which it affirmed the June 28, 1994 decision of the Office of Workers' Compensation Programs on the grounds that appellant has no more than a 19 percent permanent impairment of her right arm for which she received schedule awards.² The Board found that the Office had properly relied on the opinion of the Office medical adviser who evaluated the findings of Dr. Paul C. Milling, a Board-certified orthopedic surgeon to whom the Office referred appellant.³ In early 1981, appellant, then a 29-year-old mail clerk, had filed a claim alleging that she sustained an employment-related right upper extremity condition. The Office accepted that appellant sustained a sprain, neuroma and ganglion of her right wrist. Appellant sustained recurrences of her ganglion in 1983, 1984 and 1986 and another right wrist sprain in 1984. The Office authorized the performance of right wrist surgeries in 1982, 1983, 1984, 1986 and 1991.⁴ In 1989, 1990 and 1994, appellant received schedule awards for a total

¹ Docket No. 94-2436.

² The Board later denied appellant's petition for reconsideration of this decision.

³ The impairment consisted of 6 percent for ulnar nerve sensory loss, 3 percent for radial nerve sensory loss, and 12 percent for impairment associated with torn triangular fibrocartilage. The individual impairments were combined to total 19 percent by using the Combined Values Chart of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁴ The Office later accepted that appellant sustained employment-related torn triangular fibrocartilage of her right wrist.

permanent right arm impairment of 19 percent. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

After the Board's October 2, 1996 decision, appellant continued to claim that she was entitled to additional schedule award compensation for the permanent impairment of her right arm. By decision dated September 14, 2000, the Office determined that appellant did not have more than a 19 percent permanent impairment of her right arm for which she received schedule awards.

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,⁶ including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.⁷ The schedule award provisions of the Act⁸ and its implementing regulation⁹ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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 implementing regulation as the appropriate standard for evaluating schedule losses.¹⁰

In June 2000, the Office referred appellant to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for an evaluation of the permanent impairment of her right arm. In a report dated June 15, 2000, Dr. Dorsey detailed the findings of his examination and concluded that appellant did not exhibit any sensory loss, weakness or limited motion in her right arm. In a report dated July 23, 2000, an Office medical adviser indicated that she had applied the relevant standards of the A.M.A., *Guides* and had determined that appellant did not have any permanent impairment of her right arm.¹¹

In a report dated August 19, 1999, Dr. Milling stated that the "permanent functional loss of the [right] wrist is estimated to be 20 percent." However, the opinion of Dr. Milling is of limited probative value in that Dr. Milling failed to provide an explanation of how his assessment

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404 (1999).

¹⁰ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

¹¹ The Office medical adviser stated that appellant had no impairment due to sensory loss, weakness or limited motion in her right arm; *see A.M.A., Guides* 15-40.

of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.¹²

The Board notes that the record does not contain any report which shows that appellant has more than a 19 percent permanent impairment of her right arm for which she received schedule awards. The July 23, 2000 report of the Office medical adviser, which conformed with the standards of the A.M.A., *Guides*, showed that appellant did not have permanent impairment of her right arm.¹³ As noted above, the August 19, 1999 report of Dr. Milling was of limited probative value because its impairment assessment was not derived in accordance with the A.M.A., *Guides*. For these reasons, the Office properly determined that appellant has no more than a 19 percent permanent impairment of her right arm for which she received schedule awards.

The September 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹² See *James Kennedy, Jr.*, *supra* note 10 (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

¹³ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).