

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 01-211; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has any permanent impairment of her right upper extremity for which she is entitled to a schedule award.

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

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³ Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

¹ 5 USC §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In this case, the Office accepted that appellant, then a 39-year-old letter carrier, developed right carpal tunnel syndrome in the performance of duty. Appellant underwent authorized carpal tunnel release surgery on her right wrist on January 14, 2000. On April 13, 2000 appellant filed a claim for a schedule award for her right carpal tunnel syndrome. In a decision dated August 28, 2000, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record failed to establish any ratable permanent impairment as a result of the accepted right carpal tunnel syndrome.

In support of her claim for a schedule award, appellant submitted medical reports from Dr. John T. Burns, a Board-certified orthopedic surgeon and treating physician. In a report initially completed on March 2, 2000, and signed by the physician on August 1, 2000, Dr. Burns noted that appellant had reached maximum medical improvement, and that range of motion testing on appellant's right wrist revealed flexion to 20 degrees, extension to 48 degrees, radial deviation of 12 degrees and ulnar deviation of 20 degrees. Dr. Burns further noted, however, that these impairments in motion were related to appellant's prior wrist injuries, and concluded that appellant had zero percent impairment of her right wrist causally related to her accepted right carpal tunnel syndrome.

In a memorandum dated August 21, 2000, an Office medical adviser, having reviewed Dr. Burns' report at the Office's request, opined that appellant had zero percent permanent impairment of the right upper extremity.

While the Office correctly found, in its August 28, 2000 decision, that the medical evidence of record fails to establish that appellant has any ratable impairment of her right upper extremity due to her accepted right carpal tunnel syndrome, the record does contain evidence that appellant may have a ratable impairment of the right upper extremity due to a prior injury. The statement of accepted facts prepared by the Office indicates that appellant has filed for an earlier injury to her right wrist which occurred on December 7, 1996, when a mailbox unit fell injuring her right hand. The statement further indicates that on June 23, 1997 Dr. Burns surgically reconstructed appellant's right wrist dorsal scapholunate, and that on October 9, 1998, Dr. Burns performed a de Quervain's release of the right wrist. The record does not indicate, however, whether this prior claim was accepted by the Office. Office procedures in effect at the time of the August 28, 2000 decision indicate that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further provides that cases should be doubled as soon as the need to do so becomes apparent.⁶ As the Office did not associate the right carpal tunnel claim with appellant's prior right wrist claim, and as Dr. Burns specifically noted, in his March 2, 2000 report, that appellant's abnormal right wrist motion is due to her prior injuries, the Board will remand the case to the Office for consolidation of all appellant's prior claims for the same part of the body, to be followed by a *de novo* decision on the merits of the claim to protect appellant's appeal rights.⁷

⁶ FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury case is reported for an employee who has filed a previous injury claim for the same part of the body.

⁷ Preexisting impairments of the scheduled member should be calculated into the percentage of impairment of the member. See *John Constantin*, 39 ECAB 1090 (1988).

The decision of the Office of Workers' Compensation Programs dated August 28, 2000 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
August 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member