

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS COHEN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Southeastern, PA

*Docket No. 99-178; Submitted on the Record;
Issued January 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she has more than a 10 percent permanent impairment of the left arm, for which she received a schedule award.

On August 20, 1992 appellant, then a 48-year-old letter sorting machine clerk, filed an occupational disease claim alleging that her carpal tunnel syndrome was caused by keying mail at work.

By decision dated March 31, 1993, the Office of Workers' Compensation Programs denied the claim, finding that appellant did not submit medical evidence sufficient to establish that the claimed condition was causally related to her employment.

By letter dated April 6, 1993, appellant's attorney requested a hearing, which was held on September 23, 1993. By decision dated December 23, 1993, an Office hearing representative set aside the previous decision, finding that appellant had submitted sufficient medical evidence to warrant acceptance of the claim for left carpal tunnel syndrome. The Office paid appellant temporary total disability compensation for appropriate periods. She was released to return to limited-duty work on March 26, 1996.

On April 3, 1996 appellant filed a notice of a recurrence of disability on April 2, 1996, which was caused or aggravated by her July 21, 1992 employment injury. The Office accepted the claim and paid appellant appropriate compensation for temporary total disability as of April 2, 1996 and continuing.

On May 12, 1997 appellant filed a claim for a schedule award based on partial loss of use of her left arm. In support she submitted a report dated April 23, 1997, from Dr. Ronald J. Potash, a Board-certified surgeon. He reviewed appellant's medical records and concluded, pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (the A.M.A., *Guides*), that appellant had a 30 percent impairment of the left upper extremity based on loss of grip strength. Dr. Potash calculated this loss using the

Jamar Hand Dynameter, which indicated ten pounds of force expended in the right hand as opposed to four pounds of strength in the left hand. He determined that this calculation amounted to a 60 percent loss of strength, which, pursuant to Table 34 at page 65 of the A.M.A., *Guides*, resulted in a 30 percent impairment of the left upper extremity.

In a report dated May 7, 1997, Dr. Lawrence H. Schneider, a Board-certified orthopedic surgeon and a specialist in hand surgery, who examined appellant in 1995 and 1996, stated:

“The left upper extremity did not show any of the specific findings of carpal tunnel syndrome at this time. [Appellant] did report intermittent tingling in the hand, which was not present at this time. She did not [have] a true Tinel’s sign or true Phalen’s test. Thenar muscles are strong. [Appellant] did state on light touch examination that she had better sensation in the ring and little fingers than she did in the thumb, index and long fingers....”

Dr. Schneider to whom the Office referred appellant, concluded: “I have not seen any major change in [appellant’s] condition. I have examined her on three occasions. [Appellant] may have some minor neuropathy of the left median nerve.”

In a report dated June 16, 1997, Dr. Scott M. Fried, an osteopath and appellant’s treating physician, stated that he had reviewed Dr. Potash’s April 23, 1997 report and agreed with his findings of a 30 percent impairment of appellant’s left upper extremity, which were consistent with his own findings.

In a report dated July 31, 1997, an Office medical adviser reviewed the medical reports in the record and concluded that appellant had sustained a 10 percent impairment of the left arm. He indicated that he had based his opinion on the findings and conclusions contained in Dr. Schneider’s May 7, 1997 report. The Office medical adviser stated that the fourth edition of the A.M.A., *Guides* at page 64 provides that strength measurements are functional tests influenced by subjective factors and noted that the A.M.A., *Guides* recommended five readings be taken to assess maximum effort. He stated, however, that Dr. Potash listed only one reading in his report, which was not consistent with Dr. Schneider’s finding of normal thenar muscles and no motor loss. The Office medical adviser noted that Dr. Schneider, as a Board-certified hand surgeon, recorded intermittent tingling of the fingers and concluded that appellant had mild median neuropathy, which pursuant to Table 16, at page 57 of the A.M.A., *Guides* permits only a 10 percent impairment of the arm.

On August 12, 1997 the Office granted appellant a 10 percent permanent impairment of the left arm from May 7 through December 11, 1997, for a total of 31.20 weeks of compensation.

By letter dated August 15, 1997, appellant’s attorney requested a hearing, which was held on April 14, 1998. By decision dated July 6, 1998, an Office hearing representative affirmed the Office’s previous decision.

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

In this case, there was disagreement between the Office referral physician, Dr. Schneider and Dr. Potash, regarding the percentage of impairment in appellant’s left upper extremity

caused by her accepted carpal tunnel condition, as well as the proper method of calculation used under the A.M.A., *Guides*. When such conflicts in medical opinion arise, section 8123(a) requires the Office to appoint a third or “referee” physician, also known as an “impartial medical examiner.”¹ Because the Office did not refer the case to an impartial medical examiner, there remains an unresolved conflict in medical opinion.

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist selected in accordance with the Office’s procedures, to resolve the outstanding conflict in medical evidence regarding the appropriate percentage of impairment in appellant’s left arm. On remand, the Office should instruct the impartial medical examiner to provide a well-rationalized opinion, to refer specifically to the applicable tables and standards of the A.M.A., *Guides* in making his findings and rendering his impairment rating and to indicate the specific background upon which he based his opinion. After such further development of the record as it deems necessary, the Office shall issue a *de novo* decision.

The Office’s decision of July 6, 1998 is therefore set aside, and the case is remanded to the Office of Workers’ Compensation Programs for further action consistent with this decision of the Board.

Dated, Washington, DC
January 9, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

¹ Section 8123(a) of the Federal Employees’ Compensation Act provides in pertinent part, “[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” *See Dallas E. Mopps*, 44 ECAB 454 (1993).