

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. HENNINGER and U.S. POSTAL SERVICE,
POST OFFICE, Levittown, PA

*Docket No. 00-552; Submitted on the Record;
Issued June 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 15 percent permanent impairment to her left arm.

The Office of Workers' Compensation Programs accepted that appellant sustained a left wrist contusion and fracture of the left radius in the performance of duty on October 15, 1991. By decision dated April 2, 1996, the Office issued a schedule award for a 10 percent impairment to the left arm. By decision dated August 26, 1997, an Office hearing representative remanded the case for further development. In a decision dated January 6, 1998, the Office issued a schedule award for an additional five percent impairment to the left arm. An Office hearing representative, in a decision dated July 9, 1998, once again remanded the case for further development.

In a decision dated November 9, 1998, the Office determined that appellant had no more than a 15 percent permanent impairment to the left arm. This decision was affirmed by an Office hearing representative in a decision dated August 12, 1999.

The Board finds that appellant has not established more than a 15 percent permanent impairment to the left arm.

Section 8107 of the Federal Employees' Compensation 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.¹ 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

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

In the present case, an attending physician, Dr. David Weiss, an osteopath, opined in a July 17, 1995 report that appellant had a 20 percent permanent impairment, based on loss of grip strength. The Board notes that the A.M.A., *Guides* does not encourage the use of grip strength as an impairment rating: “Because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* for the most part is based on anatomic impairment, the A.M.A., *Guides* does not assign a large role to such measurements.”³ Only in rare cases should grip strength be used, and only when it represents an impairing factor that has not been otherwise considered adequately. In addition, the A.M.A., *Guides* states that measurements are repeated three times and the results averaged. Dr. Weiss does not address the issue of whether grip strength was the only appropriate measurement of impairment, nor does he indicate whether repeated tests were performed. The Board finds that Dr. Weiss’ report is of diminished probative value to the issues presented.

The Office referred appellant to Dr. Andrew Sattel, an orthopedic surgeon, who opined in a December 21, 1995 report that appellant had a 10 percent permanent impairment. Dr. Sattel does not describe the basis for the impairment rating or refer to specific tables in the A.M.A., *Guides*. His report is also of little probative value.

Although the hearing representative found in the August 26, 1997 decision that a conflict in the medical evidence under 5 U.S.C. § 8123(a) was created, the Board finds, for the reasons noted above, that the medical evidence was of such limited probative value that no conflict was created. The referral to Dr. Bong S. Lee, an orthopedic surgeon, was for a second opinion evaluation, not to resolve a conflict.⁴

In his November 19, 1997 report, Dr. Lee opined that appellant had a minimal residual impairment from the unhealed triangular fibrocartilage of the left wrist, estimated at a 15 percent impairment. An Office medical adviser initially indicated in an December 23, 1997 report that the impairment was based on carpal instability. Dr. Lee stated in a supplemental report dated October 29, 1998 that the impairment was not based on carpal instability, but rather on the injury to the triangular fibrocartilage. An Office medical adviser, in a report dated November 9, 1998, identified Table 18, which provides a maximum of 30 percent impairment for the proximal carpal row.⁵ He noted that Dr. Lee’s value is 50 percent of the maximum. The A.M.A., *Guides* indicate that generally Table 18 is used in connection with one of the tables from Tables 19 through 30, to derive the impairment percentage. The medical adviser, however, notes that the A.M.A., *Guides* does give the evaluator the discretion to estimate the impairment percent for

² A. George Lampo, 45 ECAB 441 (1994); 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides*, (4th ed. 1993).

⁴ Cleopatra McDougal-Saddler, 47 ECAB 480 (1996).

⁵ A.M.A., *Guides*, 58, Table 18.

musculoskeletal defects if other estimates are inadequate to measure the impairment.⁶ The medical adviser found that 50 percent of the maximum was appropriate in this case.

The Board finds that the record does not contain probative medical evidence establishing that appellant has more than a 15 percent permanent impairment. Dr. Weiss' report is of diminished probative value for the reasons noted above and the weight of the probative evidence indicates a 15 percent permanent impairment to the left arm under the A.M.A., *Guides*.

The decision of the Office of Workers' Compensation Programs dated August 12, 1999 is affirmed.

Dated, Washington, DC
June 20, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁶ *Id.* at 63-64.