

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDDIE J. YOTHER and DEPARTMENT OF THE NAVY,
TRIDENT REFIT FACILITY, REPAIR DEPARTMENT, Kings Bay, GA

*Docket No. 00-1353; Submitted on the Record;
Issued March 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to more than a two percent permanent impairment for the loss of use of his left arm, for which he has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than a two percent permanent impairment for the loss of use of his left arm, for which he has already received a schedule award.

On May 6, 1997 appellant, then a 46-year-old welder, filed a claim for an occupational disease (Form CA-2) alleging that on October 9, 1995 he first realized that his carpal tunnel syndrome was due to factors of his federal employment.

By letter dated July 30, 1997, the Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome.

On November 23, 1998 appellant filed a claim (Form CA-7) for a schedule award.

By letter dated December 29, 1997, the Office advised appellant's physician to determine the extent of appellant's permanent partial impairment due to his employment-related bilateral carpal tunnel syndrome based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Dr. Bruce Steinberg, an orthopedic surgeon and appellant's treating physician, submitted a November 17, 1997 medical report finding that appellant had a nine percent impairment of the whole person based on the A.M.A., *Guides*.

On February 10, 1998 an Office medical adviser reviewed Dr. Steinberg's report and determined that appellant had a 10 percent permanent impairment of the right upper extremity.

Appellant submitted Dr. Steinberg's February 13, 1998 report revealing that he had a 15 percent permanent impairment of the left upper extremity. He also submitted Dr. Steinberg's November 17, 1997 report finding that he had a 15 percent permanent impairment of the right upper extremity.

On February 23, 1998 an Office medical adviser reviewed appellant's medical records, including Dr. Steinberg's November 17, 1997 medical report and determined that appellant had a five percent permanent impairment of the right upper extremity.¹

By decision dated March 10, 1998, the Office granted appellant a schedule award for a five percent permanent loss of use of his right upper extremity.

In letters dated March 12 and 19, 1998, appellant requested a review of the written record.

In a September 11, 1998 decision, the hearing representative modified the Office's decision in finding that appellant was entitled to an additional five percent schedule award for the loss of use of his right upper extremity, which totaled an award for a 10 percent permanent impairment.

Based on the hearing representative's decision, the Office granted appellant a schedule award for an additional five percent permanent impairment of the right upper extremity on September 29, 1998.

On June 30, 1999 appellant filed a Form CA-7 for his left arm that was dated November 3, 1998.²

By letter dated August 11, 1999, the Office advised Dr. Steinberg to determine the extent of permanent impairment of appellant's left upper extremity based on the fourth edition of the A.M.A., *Guides*.

On August 22, 1999 Dr. Steinberg submitted a medical report finding that appellant had a two percent impairment of the right upper extremity and a two percent impairment of the left upper extremity.³

On November 5, 1999 an Office medical adviser reviewed appellant's medical records and stated that there was no record of Dr. Steinberg providing the impairment of appellant's left upper extremity, that Dr. Steinberg had only provided a rating for appellant's right upper extremity. The Office medical adviser requested that additional data be obtained.

¹ The Office medical adviser's finding was made in response to the Office's February 6, 1998 request to determine the extent of permanent impairment of appellant's right upper extremity.

² Prior to the filing a Form CA-7 on June 30, 1999, appellant filed a Form CA-7 for the loss of use of his left upper extremity on April 14, 1999. Appellant filed the instant Form CA-7 because the original claim was lost.

³ Previously, the Office received Dr. Steinberg's February 1, 1999 medical report finding that appellant had a two percent impairment of the right upper extremity and a two percent impairment of the left upper extremity based on the A.M.A., *Guides*.

The Office advised an Office medical adviser that the records contained medical evidence from Dr. Steinberg regarding an impairment rating for appellant's left upper extremity. On November 23, 1999 an Office medical adviser reviewed appellant's medical records and determined that appellant had a two percent permanent impairment of the left upper extremity.

By decision dated December 14, 1999, the Office granted appellant a schedule award for a two percent permanent impairment for the loss of use of his left arm.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations,⁵ set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁶ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁷

In finding that appellant had a two percent permanent impairment of the left upper extremity, the Office medical adviser noted that Dr. Steinberg's December 30, 1998 and January 19, 1999 medical reports revealed that appellant had residual numbness in his ring and small fingers. Utilizing Table 1, page 3/18 and Table 2, page 3/19 of the fourth edition of the A.M.A., *Guides*, the Office medical adviser determined that appellant had a 20 percent impairment of the finger, which constituted a 2 percent impairment of the hand, totaling a 2 percent permanent impairment of the left upper extremity.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a two percent permanent impairment for the loss of use of his left upper extremity. Further, the Board notes that Dr. Steinberg, appellant's own treating physician, determined that appellant had a two percent impairment of the left upper extremity based on the A.M.A., *Guides*. Appellant has failed to provide probative, supportable medical evidence that he has greater than a two percent impairment already awarded.

⁴ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.304.

⁶ 5 U.S.C. § 8107(c)(19).

⁷ *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

The December 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 12, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member