

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NANCY G. KEENAN and U.S. POSTAL SERVICE,  
POST OFFICE, Blackwood, NJ

*Docket No. 00-1540; Submitted on the Record;  
Issued October 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained more than a 10 percent permanent impairment of both the left and right arms for which she received a schedule award.

On June 28, 1990 appellant, then a 32-year-old distribution clerk, filed a notice of occupational disease alleging that she developed carpal tunnel syndrome while performing repetitive work duties required by her federal position. The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome. The Office also authorized left carpal tunnel release on December 13, 1990 and right carpal tunnel release on April 18, 1991. Appellant returned to part-time limited work on June 17, 1991 and regular duty on May 5, 1992.

On November 11, 1996 appellant filed a claim (Form CA-7) for a schedule award. Dr. David Weiss, an osteopath, evaluated appellant on the advice of appellant's counsel and his report was submitted in support of the schedule award. In the October 4, 1996 report, Dr. Weiss indicated that an electromyogram (EMG) was performed in October 1993, following appellant's first release surgery, which revealed evidence of residual median neuropathy of both wrists. He also referred to a nerve conduction study performed on October 26, 1995 which confirmed the presence of carpal tunnel syndrome on the right and possible incipient carpal tunnel syndrome on the left. Dr. Weiss reported that examination of the left wrist revealed noted tenderness over the palmar surface, with full range of motion carried through with pain at the extremes. He stated that examination of the right wrist revealed no tenderness, full range of motion and no pain noted with each range of motion. Dr. Weiss then reported that sensory examination was decreased over the thumb, second and third digits of both hands involving the median nerve distribution. He noted that for sensory deficit of the left and right upper extremity, the area of involvement according to Figure 45 on page 50 was the medial aspect of both hands. Dr. Weiss then calculated maximum loss of function due to sensory deficit and grade of sensory loss or pain for both hands using Table 15, page 54 and Table 11a, page 118 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed., 1993). He concluded that appellant had a total of 30 percent impairment in each upper extremity.

On February 21, 1997 an Office medical adviser reviewed Dr. Weiss' report and determined that his impairment rating of 30 percent was not substantiated by a report already of record dated November 2, 1995 from Dr. Frederick Ballet, a Board-certified orthopedic surgeon and appellant's treating physician. In the November 2, 1995 report, Dr. Ballet found at that time that appellant had only had persistent bilateral median nerve dysfunction. He referred to the EMG performed on October 26, 1995 and indicated that the studies demonstrated mildly increased distal motor and sensory latencies about the right carpal canal. Dr. Ballet related that the report further showed borderline numbers on the left with no other entrapment and no cervical radiculopathy.

On March 26, 1997 the Office referred appellant to Dr. Frank Mattei, a Board-certified orthopedic surgeon, for an independent medical evaluation to resolve the conflict. In his report dated March 26, 1997, Dr. Mattei indicated that he examined appellant on March 19, 1997 and found that appellant had good range of motion in the hands and wrist joint motion was normal but limited with complaints of pain on volar flexion. He stated that appellant also had entrapment of the median nerve at the wrist joint bilaterally and possibly at the ulnar nerve at the elbow joint bilaterally, more affected on the right than the left. Dr. Mattei further stated that appellant had a difference in two-point fixation in sensation of the fingertips mostly affecting the left ulnar and median nerve, whereas it mostly affected the median nerve on the right. He then referred to the alternative method used in Table 16, page 57 of the A.M.A., *Guides* and calculated appellant's impairment due to entrapment neuropathy. Dr. Mattei stated: "The entrapped median nerve at the right wrist joint, which is severe would be 40 percent upper extremity of impairment and 20 percent on the left. However, with the ulnar nerve involvement of the wrist joint and elbow joint would add an additional impairment of 20 percent, which would indicate a 80 percent disability of the upper extremities at this time."

The Office thereafter referred appellant to Dr. Scott Sharets, a Board-certified neurologist, for an impartial medical evaluation to resolve the conflict. In a report dated June 8, 1997, Dr. Sharets reviewed the statement of accepted facts, appellant's medical records and employment history and then reviewed his findings on examination. He concluded that appellant should first receive treatment for her condition before he made a disability determination and if she was unresponsive to the treatment, Dr. Sharets noted that he would then issue a percentage of impairment. The Office requested a final report from Dr. Sharets on December 2, 1997; however, he did not forward a report regarding appellant's percentage of impairment.

On September 2, 1998 the Office referred appellant to Dr. Eric Erlbaum, a Board-certified neurologist, for another independent medical evaluation in order to resolve the outstanding conflict in medical opinion. In a report dated October 26, 1998, Dr. Erlbaum reviewed the medical evidence and his findings on examination. He found that the abnormalities included pain, mild thenar eminence wasting on the right, a questionable Tinel's sign and some sensory findings compatible with a residual carpal tunnel syndrome bilaterally. Dr. Erlbaum reported that appellant continued to suffer residuals of the accepted bilateral carpal tunnel syndrome on the basis of pain, numbness, tingling and mild atrophy, worse on the right than left. He concluded that according to the A.M.A., *Guides* appellant had a 10 percent permanent impairment of the right upper extremity and a 10 percent left upper extremity impairment; however, he did not identify the specific figures or tables used in making his determination.

On February 11, 1999 an Office medical adviser reviewed the report of Dr. Erlbaum dated October 26, 1998 and calculated an impairment rating based on Table 16, page 57 of the A.M.A., *Guides*. The Office medical adviser determined that appellant had a mild impairment due to entrapment neuropathy of the median nerve at the wrist of 10 percent and that her total impairment for both the right and left upper extremity equaled 10 percent.

By decision dated February 23, 1999, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right arm and 10 percent impairment of the left arm. The period of the award ran for 62.40 weeks from November 30, 1995 to February 8, 1997.

Appellant then requested an oral hearing, which was held on September 24, 1999. Her case record was thereafter forwarded to another Office medical adviser for further review. In a memorandum dated October 20, 1999, an Office medical adviser reported that appellant's record was reviewed, subjective findings and objective physical evaluations were noted and electromyography evidence was evaluated. The Office medical adviser stated that the available medical documentation did not support "severe" median nerve entrapment at the wrist or "moderate" left median nerve entrapment, as suggested by Dr. Mattei in his report of record dated March 19, 1997 and that there was no support of ulnar nerve involvement. The Office medical adviser further noted that an EMG and a neurology study performed June 5, 1997 suggested residual mild right carpal tunnel. The Office medical adviser concluded that according to Table 16, page 57 of the A.M.A., *Guides*, the schedule award previously granted for mild median nerve entrapment neuropathy at the wrist level of 10 percent for each upper extremity was correct.

On December 2, 1999 an Office hearing representative issued a decision, in which she found that appellant failed to provide any additional medical documentation in accordance with the established guidelines to support entitlement to more than the 10 percent previously awarded for each upper extremity. The Office hearing representative affirmed the prior decision.

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

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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.

In the present case, Dr. Erlbaum, the independent medical examiner, did not fully explain his conclusion relative to appellant's permanent impairment in his October 26, 1998 report. In his report, Dr. Erlbaum only stated that appellant had an impairment of 10 percent to each arm pursuant to the A.M.A., *Guides*. The Office medical adviser thereafter recommended 10 percent for each arm stating, "median entrapment of the median nerve, mild, is 10 percent as per

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

Table 16, page 57” based on his report. Dr. Erlbaum did not indicated that he applied Table 16 on page 57 of the A.M.A., *Guides* to determine impairment, nor did he use the phrase entrapment of the median nerve as described in Table 16. He only used the word “mild” in his report by stating that appellant had mild atrophy of the right thenar nerve. Dr. Erlbaum’s conclusion of 10 percent impairment to each arm does not imply that ascribed “mild” to Table 16 of the A.M.A., *Guides* in reaching his conclusion. Because he failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board for evaluating schedule losses, Dr. Erlbaum’s opinion is entitled to little weight.<sup>3</sup>

The record, therefore, contains insufficient clinical information to determine the extent of appellant’s permanent impairment and the Office should have sought clarification regarding the impairment assessment. The Board will set aside the Office’s December 2, 1999 decision and remand the case for proper development of the medical evidence. After such further development as may be required, the Office shall issue an appropriate final decision on appellant’s entitlement to schedule compensation.

The December 2, 1999 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC  
October 12, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> *James A. Sellers*, 43 ECAB 924 (1992).