

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY THOMASON and U.S. POSTAL SERVICE,
POST OFFICE, Downingtown, PA

*Docket No. 00-2142; Submitted on the Record;
Issued October 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she has more than 20 percent permanent impairment of the left arm and 10 percent permanent impairment of the right arm, for which she received a schedule award.

The Board finds that appellant has not established that she has more than a 20 percent permanent impairment of the left arm and 10 percent permanent impairment of the right arm for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office of Workers' Compensation Programs accepted that on March 31, 1987 appellant, then a 33-year-old clerk, sustained an injury to her right hand and wrist in the performance of duty. Appellant did not stop work but received medical benefits for her accepted injury.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

On January 17, 1991 appellant filed a notice of recurrence of disability alleging that she sustained continued pain attributed to the March 31, 1987 injury. Appellant did not stop work and received benefits following this claim.

On April 19, 1991 and later on March 30, 1993, appellant filed occupational disease claims alleging that she developed carpal tunnel syndrome and required surgery as a result of performing repetitive work duties. The Office accepted the claims for carpal tunnel syndrome and carpal tunnel release. Appellant underwent right carpal tunnel release surgery in 1991 and left carpal tunnel release surgery on September 20, 1996 with intermittent periods of disability. Appellant continued to receive compensation benefits and later returned to full time on December 11, 1996.

On April 22, 1999 appellant filed a CA-7 claim for a schedule award. In support, appellant's counsel submitted a medical report dated June 9, 1998 from Dr. David Weiss, an osteopath, who reviewed appellant's employment and medical history, her chief complaints and his findings on examination. Dr. Weiss reported that examination of the right wrist indicated a positive carpal compression test but negative Tinel's sign and negative one-minute Phalen's sign. He stated that range of motion of the right wrist revealed dorsiflexion at 75/75 degrees, palmar flexion 75/75 degrees, radial deviation 20/20 degrees and ulnar deviation 35/35 degrees and that each range of motion was carried through with extreme pain. Dr. Weiss indicated that examination of the left wrist revealed a positive carpal compression test, positive Tinel's sign and positive one-minute Phalen's sign. He further stated that range of motion of the left wrist revealed dorsiflexion at 75/75 degrees, palmar flexion 75/75 degrees, radial deviation 20/20 degrees and ulnar deviation 35/35 degrees and also that each range of motion was carried through with extreme pain. Dr. Weiss indicated that grip strength testing revealed 33 kilogram of force strength in the right hand versus 24 kilogram in the left and a sensory examination revealed a deficit in the left hand over the median distribution but none in the right. In the report, Dr. Weiss stated that he evaluated appellant's impairment in accordance with the A.M.A., *Guides* and concluded that entrapment of the right median nerve at the wrist equaled 15 percent, thus the total right upper extremity equaled 15 percent. He further found that entrapment of the left median nerve at the wrist equaled 30 percent, thus the total left upper extremity equaled 30 percent. Dr. Weiss indicated that he utilized Table 16, page 57 of the A.M.A., *Guides* to determine impairment.

On June 10, 1999 an Office medical adviser reviewed Dr. Weiss' report and indicated that he described a 15 percent impairment of the right arm and a 30 percent impairment of the left arm according to Table 16, page 57 of the A.M.A., *Guides*, 4th edition. He stated, however, that this table on page 57 has neither a 15 or 30 percent value for entrapment of the median nerve at the wrist, but only 10, 20 and 40 percent impairment for mild, moderate or severe for degrees of severity. He further stated: "Based on Dr. Weiss' report, right arm pain, no loss of sensation can work modified duties-MILD. "Pain in the extremes" on range of motion means at the furthest measure of motion, not extreme pain. Since left hand has decreased sensation plus pain-MODERATE." The Office medical adviser concluded that appellant had an impairment of 10 percent in the right arm and 20 percent in the left arm and that appellant achieved maximum medical improvement on June 9, 1998, the date of Dr. Weiss' report.

By decision dated July 13, 1999, the Office issued appellant a schedule award on the basis that she had a 20 percent permanent impairment in her left arm and a 10 percent permanent impairment in her right arm. Appellant disagreed with the decision and through counsel requested an oral hearing, which was held February 1, 2000.

During the hearing, appellant testified that, while working as a clerk, she was responsible for 8 to 12 hours of sorting mail, lifting bundles of mail from hampers and tubs and carrying tubs to various stations. She testified that her work duties caused her condition and need for surgery and that following treatment and some recovery, she returned to light clerical work for four hours per day. Appellant testified that she continued to suffer pain, numbness and loss of grip strength in both hands. Appellant's counsel discussed the impairment rating provided by Dr. Weiss' in his June 9, 1998 report and stated that it should be given the weight of the medical evidence. Alternatively he argued that there was at least a conflict in the medical evidence between Dr. Weiss and the Office medical adviser, which should be resolved by a second opinion physician.

By decision dated March 15, 2000, the Office hearing representative found that appellant had no more than a 20 percent impairment of the right arm and 10 percent of the left arm for which she received a schedule award and affirmed the prior decision.

In this case, Dr. Weiss reported that appellant had an impairment rating of 15 percent for the right upper extremity and 30 percent for the left upper extremity based on entrapment of the median nerve at the wrist according to Table 16, page 57 of the A.M.A., *Guides*. However, as the Office medical adviser correctly pointed out, Table 16 of page 57 of the A.M.A., *Guides* gives values for percentages of impairment to the upper extremity of 10, 20 and 40 percent for mild, moderate or severe entrapment at the median nerve of the wrist. Dr. Weiss did not provide any explanation as to how he determined appellant's impairment given the actual values of impairment of 10, 20 and 40 percent at the median nerve of the wrist as provided in Table 16 on page 57.

The Office based its schedule award on the June 10, 1999 evaluation of the Office medical adviser who reviewed the findings of Dr. Weiss and provided his impairment ratings of appellant's left and right arms in accordance with the A.M.A., *Guides*. The Office medical adviser properly used the A.M.A., *Guides* to conclude that appellant had a 10 percent permanent impairment for entrapment neuropathy, or a total of 10 percent permanent impairment of the right arm. He indicated that, based on Dr. Weiss' examination of appellant's right arm, Dr. Weiss found some pain but no loss of sensation and that appellant could work modified duties. He then determined that appellant's upper extremity impairment on the right was due to mild carpal tunnel syndrome and assessed 10 percent. Further, in accordance with the A.M.A., *Guides*, the Office medical adviser properly concluded that appellant had a 20 percent permanent impairment for entrapment neuropathy, or a total of 20 percent permanent impairment of the left arm. The Office medical adviser determined that with regard to appellant's left hand, since Dr. Weiss determined that she had decreased sensation plus some pain, that her upper extremity impairment on the left was due to moderate carpal tunnel and assessed 20 percent. When the treating physician does not properly use the A.M.A., *Guides* in determining permanent impairment, it is appropriate for the Office medical adviser to apply the A.M.A., *Guides* to the

findings presented by the treating physician. As the Office medical adviser's report is the only evaluation that conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.³

The March 15, 2000 and July 13, 1999 decisions of the Office of Workers' Compensation Programs hereby are affirmed.

Dated, Washington, DC
October 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

³ *Lena P. Huntley*, 46 ECAB 643 (1995).