

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH C. McMAHON and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 01-712; Submitted on the Record;
Issued October 4, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent permanent impairment in each arm for which she received a schedule award.

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

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative, and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³

The schedule award provision of the Act⁴ and its implementing regulation⁵ 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.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In February 1997 the Office of Workers' Compensation Programs accepted that appellant, then a 49-year-old letter carrier, sustained employment-related bilateral carpal tunnel syndrome. The Office authorized left carpal tunnel decompression on December 15, 1998.⁷ On October 18, 2000 the Office granted appellant a schedule award for a 10 percent impairment of her left arm and a 10 percent impairment of her right arm.

The Office periodically received reports from Dr. John P. Howser, an attending Board-certified neurosurgeon. In several reports dated in mid 1999, Dr. Howser indicated that, due to her bilateral carpal tunnel syndrome, appellant was capable of only limited-duty work with a restriction from lifting more than 25 pounds. In a form report dated May 15, 2000, Dr. Howser stated that appellant had reached maximum medical improvement as of April 7, 2000. In a report dated June 5, 2000 Dr. Howser indicated that appellant exhibited mild left shoulder pain with range of motion.

In a report dated May 22, 2000, Dr. Howser stated:

“[Appellant] was first seen in my office on December 6, 1996 for problems with her hands as a result of repetitive use of her hands at the postal service.

“Her work-up revealed bilateral carpal tunnel syndrome which was initially treated conservatively with splints. She underwent a left carpal tunnel release on December 15, 1998.

“She will have a 2 percent anatomic disability rating rated to the body as a whole as a result of the carpal tunnel release on the left side and she will have a 15 percent anatomic disability rating rated to that extremity.”

In August 2000, the Office requested that an Office medical adviser review the May 22, 2000 report of Dr. Howser and provide an opinion on the extent of the permanent impairment of appellant's arms. In a note dated August 31, 2000, the Office medical adviser indicated that, according to Table 16 on page 57 of the A.M.A., *Guides* (4th ed. 1993), appellant had a 10 percent impairment of her left arm and a 10 percent impairment of her right arm.⁸

The Board finds that the Office medical adviser had an inadequate basis upon which to calculate an impairment rating for appellant's arms. The record contains only a few brief reports from mid 2000 concerning the condition of appellant's arms. These reports do not contain any findings regarding the nature and extent of appellant's right and left arm conditions. The Office medical adviser chose a diagnosis-based rating to calculate appellant's permanent impairment. The A.M.A., *Guides* provides an alternative method for evaluating upper extremity impairment due to entrapment neuropathy which involves accessing sensory and motor deficits.⁹ Without adequate findings in the medical record regarding appellant's condition, it remains unclear whether it was appropriate for the Office medical adviser to apply a diagnosis-based rating

⁷ In August 1999 the Office denied appellant's request for authorization to surgically remove nodules in her left which were related to her Dupuytren's contracture condition. This matter is not currently before the Board.

⁸ The A.M.A., *Guides* provides for a 10 percent rating for “mild” impairment due to ulnar nerve entrapment at the wrist. A.M.A., *Guides* 57, Table 16.

⁹ See A.M.A., *Guides* 46-56.

instead of a rating based on sensory and motor deficits. The Office medical adviser did not provide any explanation of his rating assessment.¹⁰

While the claimant has the burden of establishing the elements of his claim by the weight of reliable, probative and substantial evidence,¹¹ it is well established that proceedings under the Act are not adversarial in nature and the Office shares responsibility in the development of the evidence.¹² For these reasons, the case will be remanded to the Office for further development of the medical evidence and evaluation of the permanent impairment of appellant's arms. Upon remand to the Office, appellant and the case record should be referred to an appropriate specialist for evaluation of her upper extremity impairment. After such proceedings as it deems necessary, the Office should issue an appropriate decision.

The October 18, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, DC
October 4, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ In his May 22, 2000 report, Dr. Howser suggested that appellant had a 15 percent impairment of her left arm. However, the opinion of Dr. Howser is of limited probative value in that Dr. Howser 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 as appropriate for evaluating schedule losses; *see James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

¹¹ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹² *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).