U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of GEORGE WOWK and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 00-1873; Submitted on the Record;*
*Issued September 7, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained more than a 13 percent impairment of the left and right upper extremities, for which he received a May 13, 1999 schedule award.

This is the second appeal before the Board in this case. Previously, the Board remanded the case to the Office of Workers' Compensation Programs to resolve an outstanding conflict of medical opinion between Dr. Nicholas Diamond, an attending Board-certified pain specialist, and an Office medical adviser, regarding whether appellant had more than a 12 percent impairment of the left and right upper extremities. The law and facts of the case as set forth in the prior decision are incorporated by reference.[1]

On March 19, 1999 the Office referred appellant, the medical record, a statement of accepted facts and a list of questions to Dr. Richard Sacks, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion between Dr. Diamond and the Office medical adviser.

In an April 5, 1999 report, Dr. Sacks noted that appellant reported "numbness and tingling in the fourth and fifth fingers of the left and right hand," pain in the upper extremities at rest, stiffness, weakness, paresthesias, a "cold feeling" and difficulty in performing activities of daily living. On muscle testing of the upper extremities, appellant's wrists were "5/5" in dorsiflexion, palmar flexion, radial and ulnar deviation and the elbows were "4/5" in flexion, extension, supination and pronation.[2] Dr. Sacks reported grip strength on three attempts, on the right: 22, 16 and 16 kilograms and on the left: 12, 10 and 10 kilograms. He also noted that the circumference of the right biceps was 35 centimeters (cm) compared to 30.5 cm on the left.

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[1] Docket No. 96-754 (issued November 2, 1998).

[2] Dr. Sacks noted that "5/5" denoted "active movement against gravity with full resistance," and that "4/5" denoted "active movement against gravity with some resistance," indicating a motor deficit of 1 to 25 percent.

On neurologic examination, Dr. Sacks found a Grade 3 impairment for both forearms and the fingers of both hands due to "[d]ecreased sensibility with or without abnormal sensation or pain which interfered with activity," connoting a sensory deficit of between 26 and 60 percent. He diagnosed "bilateral ulnar neuropathy with chronic entrapment at the elbow," causally related to the February 1, 1992 injury. Dr. Sacks noted that appellant had reached maximum medical improvement.

Referring to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Sacks opined that appellant had "both sensory and motor deficits resulting from peripheral nerve disorder to both upper extremities. Based upon Table 11, page 48,[3] He opined that appellant had a Grade 3 sensory deficit of 30 percent. Referring to Table 12, page 49,[4] Dr. Sacks found a Grade 4 motor deficit of both upper extremities, denoting a 25 percent motor deficit. "Based on Table 15, page 54, 'maximum percentage of impairment' due to ulnar nerve disorder above the forearm, appellant had a maximal percentage of upper extremity impairment of 46 percent. Therefore, impairment of the upper extremity due to motor deficit of the ulnar nerve would be 46 percent multiplied by 25 percent, equaling 11.5 percent, rounding it off, 12 percent motor deficit. Maximum upper extremity impairment due to sensory deficit of the ulnar nerve is 7 percent deficit times 30 percent grade," equaling a 2 percent impairment. Dr. Sacks then combined the 12 percent motor and 2 percent sensory impairment using the combined values chart on page 322, to equal a 13 percent impairment of the left and right upper extremities.

Dr. Sacks noted that "[d]espite the fact that grip strength was slightly decreased," he did not wish to use loss of strength as an evaluating criterion. Referring to page 64 of the A.M.A., *Guides*, he opined that "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." Dr. Sacks, therefore, concluded that "an impairment evaluation of 13 percent adequately and honestly reflects [appellant's] level of impairment."

In a May 3, 1999 note, Dr. D. Kalash, an Office medical adviser, reviewed Dr. Sacks' report and concurred with his schedule award calculations, noting that appellant had reached maximum medical improvement as of May 3, 1999.

By decision dated May 13, 1999, the Office awarded appellant a schedule award for an additional one percent impairment to the left and right upper extremities, for a total of 13 percent.[5] In a May 17, 1999 letter, appellant requested a hearing and contended that Dr. Sacks' opinion was of insufficient weight to resolve the conflict of medical opinion.

[3] Table 11, page 48 is entitled "Determining Impairment of the Upper Extremity Due to Pain or Sensory Deficit Resulting from Peripheral Nerve Disorders."

[4] Table 12, page 49 is entitled "Determining Impairment of the Upper Extremity Due to Loss of Power and Motor Deficits Resulting from Peripheral Nerve Disorders Based on Individual Muscle Rating."

[5] The award was equivalent to 6.24 weeks of compensation, running from April 27 to June 9, 1995 and was paid in a lump-sum check for $2,538.12.

The Board finds that appellant has not established that he sustained more than a 13 percent impairment of the upper extremities, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act[6] and its implementing regulations[7] 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. However, the Act does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter, which rests in the sound discretion of the Office.[8] The Board has held, however, that 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 Office has adopted the A.M.A., *Guides*, fourth edition, (1993), as an appropriate standard for evaluating schedule losses and to ensure equal justice for all claimants.[9] The Board has concurred with the adoption of the A.M.A., *Guides*.

The standards for evaluating the percentage of impairment of the upper extremities due to peripheral nerve disorders are set forth in the A.M.A., *Guides* in Table 11, page 48. The examiner first identifies the involved area using the dermatome charts appearing in Figures 45 and 46, pages 50 and 452 and identifies the innervating nerves using Table 10, Figures 45 through 47 at pages 47, 50, 52 and 53. The examiner then grades the "severity of the sensory deficit or pain" using the classifications given in Table 11, finds the "maximum impairment of the upper extremity due to sensory deficit or pain" for each nerve structure involved and finally multiplies "the sensory deficit by the maximum impairment value to obtain the upper extremity impairment for each structure involved."[10] All factors that prevent a limb from functioning normally should be considered, such as pain and weakness, together with loss of motion, in evaluating the degree of permanent impairment. This was correctly done by Dr. Sacks and affirmed by the Office medical adviser in appellant's case.

In his April 5, 1999 report, Dr. Sacks identified the ulnar nerve, found a Grade 3, 30 percent sensory impairment of both upper extremities using Table 11 and a Grade 4, 25 percent motor impairment using Table 12. Dr. Sacks noted the maximum percentage of impairment for the ulnar nerve above the forearm of 46 percent. He multiplied the motor deficit of 25 percent by the 46 percent maximum value, to arrive at a 12 percent motor deficit. He then multiplied the maximum 7 percent value for sensory deficit of the ulnar nerve by the 30 percent sensory impairment grade, resulting in a 2 percent impairment of each upper extremity due to sensory deficit. Dr. Sacks then combined the 12 percent motor deficit and 2 percent sensory deficit to equal a 13 percent permanent impairment of the left and right upper extremities. The Board

[6] 5 U.S.C. §§ 8107-8109.

[7] 20 C.F.R. § 10.404.

[8] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[9] FECA Bulletin No. 89-30 (issued September 28, 1990).

[10] *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

finds that Dr. Sacks properly used the appropriate tables and grading schemes of the A.M.A., *Guides* in arriving at this percentage of impairment.

The Board further finds that Dr. Sacks' report is sufficiently detailed and rationalized to represent the weight of the medical evidence in this case and to resolve the outstanding conflict of medical opinion.

On appeal, appellant contends that Dr. Sacks' report cannot represent the weight of the medical evidence because he did not include a separate impairment for loss of grip strength. However, Dr. Sacks explained in his April 5, 1999 report that the type, location and severity of appellant's upper extremity impairments were described adequately using the standard grading procedure for peripheral neuropathy as found in Table 11.

Appellant has not provided any medical evidence explaining how and why loss of grip strength would require a percentage of impairment in addition to the motor deficit described and graded by Dr. Sacks. Consequently, appellant has not established that he sustained more than a 13 percent permanent impairment of the right and left upper extremities.

The January 24, 2000 and May 13, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 7, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member