

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILDRED E. OSBORNE and U.S. POSTAL SERVICE,
POST OFFICE, Norcross, GA

*Docket No. 00-2727; Submitted on the Record;
Issued September 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has greater than a ten percent impairment of the left upper extremity, for which she received a schedule award.

On November 25, 1991 appellant, then a 57-year-old distribution clerk, filed a notice of traumatic injury alleging that she had pain and swelling of the left wrist while "setting off mail -- letters and flats." A nerve conduction study performed on September 30, 1992 revealed "findings compatible with but not indicative of left C8 radiculopathy. There was no active denervation and no evidence of carpal tunnel syndrome or distal radial sensory nerve involvement. The Office of Workers' Compensation Programs accepted the claim for tendinitis of the left wrist.

Appellant underwent surgery consisting of cervical laminectomy with a C5-6 fusion on November 3, 1993. She returned to limited duty in a modified clerk position effective January 18, 1994 with restrictions of no repetitive grip activities and no lifting over five pounds.

On July 2, 2000 appellant filed a CA-7 claim for a schedule award.

On October 10, 1997 appellant's treating physician, Dr. Christine Indoch, completed a CA-1303 form with regard to the evaluation of appellant's permanent partial impairment. The dated of maximum medical improvement was listed as November 1993. Dr. Indoch reported that there was no loss of active range of motion for the left arm since the "impairment is at now left shoulder level." She opined that appellant had impairment of function for weakness, deltoid atrophy, and radicular pain in the shoulder. She recommended a ten percent impairment rating for the left upper extremity "additional to cervical impairment."

The Office sent a copy of Dr. Indoch's October 10, 1997 medical report to an Office medical adviser for calculation of appellant's permanent functional loss of use of the left arm under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and the date of maximum medical improvement.

In a July 28, 2000 report, an Office medical adviser noted that there was additional impairment of the function of the arm due to weakness, atrophy and pain. Under Table 11, page 48, the impairment for pain was identified as Grade 2 (decreased sensibility with or without abnormal sensation pain which is forgotten during activity) or 25 percent. Under Table 12, page 49, the impairment for weakness was identified as Grade 4 (active movement against gravity with some resistance) or 25 percent. Under Table 14, page 52, the upper extremity impairments due to motor and sensory deficits were listed as follows: “middle trunk C7. Pain 5 percent weakness 35 percent.” The Office medical adviser further calculated the following formula to find a ten percent impairment of the left upper extremity:¹

“Pain 25 [percent] ([T]able 11) x 5 [percent] ([T]able 14) = 1.25 [percent]

Weakness 25 [percent] ([T]able 12) x 35 [percent] ([T]able 14) = 8.75 [percent]

Combined [T]able 1.25 + 8.75 = 10 [percent].”

In an August 4, 2000 decision, the Office issued a schedule award for a ten percent impairment of the left upper extremity. The period of the award was from February 6 to September 12, 1994.

The Board finds that appellant has no more than a ten percent impairment of the left upper extremity.

The schedule award provisions of the Federal Employees’ Compensation Act² and its implementing regulation³ 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. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ 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.⁵

It is appellant’s burden to establish by evidence that she is entitled to an increased schedule award. In the present case, however, appellant’s attending physician opined that she had a ten percent impairment of the left upper extremity due to the November 25, 1991 work injury. Dr. Indoch’s October 10, 1997 report was referred to an Office medical adviser who also recommended a ten percent impairment rating under the A.M.A., *Guides*. Thus, the Board finds

¹ The date of maximum medical improvement was listed as November 15, 1993.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 5 U.S.C. § 8107(c)(19).

⁵ See 20 C.F.R. § 10.404 (1999).

no evidence from which to conclude that appellant is entitled to greater than the schedule award she received for a ten percent left arm impairment.

The decision of the Office of Workers' Compensation Programs dated August 4, 2000 is hereby affirmed.

Dated, Washington, DC
September 25, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member