

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLA M. SAPP and U.S. POSTAL SERVICE,
POST OFFICE, City of Industry, CA

*Docket No. 01-1596; Submitted on the Record;
Issued April 16, 2002*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she has more than a 20 percent permanent impairment of her right arm and a 5 percent permanent impairment of her left arm, for which she received a schedule award.

In August 1992, the Office of Workers' Compensation Programs accepted that appellant, then a 44-year-old distribution clerk, sustained employment-related bilateral carpal tunnel syndrome. The Office earlier accepted that appellant sustained an employment-related musculoligamentous strain of her right arm. Appellant was terminated from the employing establishment in April 1991 due to lack of limited-duty work and she began to receive temporary total disability compensation. She underwent a right carpal tunnel release in June 1993 and a anterior transposition of the right ulnar nerve at the elbow in October 1993; the surgeries were authorized by the Office.

By award of compensation dated October 23, 1997, the Office granted appellant a schedule award for a 20 percent permanent impairment of her right arm and a 5 percent permanent impairment of her left arm. By decision dated October 7, 1998 and finalized October 9, 1998, an Office hearing representative affirmed the Office's October 23, 1997 decision. By decision dated March 3, 1999, the Office denied appellant's reconsideration request on the grounds that her application for review was not timely filed and failed to present clear evidence of error.

By decision dated April 3, 2001, the Board set aside the Office's March 3, 1999 decision and remanded the case to the Office for further proceedings.¹ The Board found that the Office improperly determined that appellant failed to file a timely application for review regarding her entitlement to schedule award compensation and therefore improperly applied the "clear

¹ Docket No. 99-1850 (issued April 3, 2001).

evidence of error” standard in denying her reconsideration request.² The Board remanded the case to the Office for consideration of appellant’s reconsideration request under the appropriate standards for a timely reconsideration request, to be followed by an appropriate decision.³ By decision dated April 20, 2001, the Office affirmed its October 9, 1998 decision on the grounds that appellant did not meet her burden of proof to establish that she had more than a 20 percent permanent impairment of her right arm and a 5 percent permanent impairment of her left arm.⁴

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 20 percent permanent impairment of her right arm and a 5 percent permanent impairment of her left arm, for which she received a schedule award.

An employee seeking compensation under the Federal Employees’ Compensation Act⁵ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,⁶ 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.⁷ The schedule award provision of the Act⁸ and its implementing regulation⁹ 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.¹⁰

The Office based its October 23, 1997 schedule award on the October 12, 1997 report of an Office medical consultant. In his October 12, 1997 report, the Office medical consultant detailed appellant’s factual and medical history, including the reports of Dr. Brent W. Miller, an

² By letter dated December 29, 1998, appellant requested reconsideration of the Office’s determinations regarding her entitlement to schedule award compensation. The Office rendered its last merit decision on October 9, 1998 and appellant’s request for reconsideration was made less than one year after October 9, 1998.

³ In its April 3, 2001 decision, the Board also affirmed the Office’s March 3, 1999 decision on the grounds that the Office properly reduced appellant’s compensation under 5 U.S.C. § 8113(b), effective April 11, 1999, to reflect her loss of wage-earning capacity had she continued to participate in vocational rehabilitation efforts. This matter is not currently before the Board on appeal.

⁴ The Office indicated that it performed a merit review of appellant’s claim in order to preserve her appeal rights.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404 (1999).

¹⁰ *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

attending Board-certified orthopedic surgeon. In a report dated October 4, 1995, Dr. Miller indicated that appellant's bilateral upper extremity condition was permanent and stationary. He stated:

“In terms of the left side, the patient states that it is not really bothersome as she is not working currently, however, if she does do typing, the symptoms increase. I would rate her symptoms as nonexistent on the left, but becoming intermittent/slight with prolonged typing and/or prolonged gripping or squeezing activities.

“In terms of the right side, the patient complains of some mild numbness in the posterior elbow, but not in the hand. She has pain in the forearm down into the ring and little fingers, rated as intermittent/slight increasing to moderate with prolonged gripping or squeezing activities or typing greater than 45 minutes per hour.”

The Office medical adviser indicated that it was appropriate to evaluate appellant's permanent impairment based in entrapment neuropathies of both upper extremities. He properly noted that the medical evidence reflected that appellant had a moderate entrapment of the median nerve at the right wrist which warranted a 20 percent impairment rating and that she had a negligible to mild entrapment of the median nerve at the left wrist which warranted an impairment rating of 5 percent.¹¹

The record does not contain any medical evidence which shows that appellant has more than a 20 percent permanent impairment of her right arm and a 5 percent permanent impairment of her left arm. Appellant submitted various reports of her treatment from physical therapists, but these reports do not constitute probative medical evidence.¹² As the report of the Office medical consultant provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.¹³ Therefore, appellant did not show that she has more than a 20 percent permanent impairment of her right arm and a 5 percent permanent impairment of her left arm

¹¹ A.M.A., *Guides* 57, Table 16 (4th ed. 1993)

¹² See 5 U.S.C. § 8101(2); *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). The Office requested that Dr. Miller provide additional medical evidence regarding the extent of appellant's permanent impairment, but he did not provide any medical reports which fulfilled this request.

¹³ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The April 20, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 16, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member