

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIVIAN GLENDENNING and U.S. POSTAL SERVICE,  
POST OFFICE, Kansas City, MO

*Docket No. 02-1522; Submitted on the Record;  
Issued December 27, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to greater than a three percent impairment of the right extremity and a one percent impairment of the left extremity, for which she received a schedule award.

On April 14, 1999 appellant, then a 50-year-old rural mail carrier, filed a notice of occupational disease alleging that she suffered from carpal tunnel syndrome due to the repetitive nature of her job duties. The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome. A right release was performed on July 7, 1999 and a left release was performed on July 14, 1999.

Appellant requested a schedule award.

The Office referred appellant for an examination with Dr. Kevin D. Komes, a Board-certified physician specializing in physical medicine and rehabilitation. In a report dated October 23, 2000, Dr. Komes discussed appellant's history of injury, medical treatment and symptoms of occasional numbness in the tips of the fingers with activity and decreased grip strength noticeable when she attempts to open jars. He noted physical findings including negative Tinel's and Phalen's signs, normal grip strength with the Jamar dynamometer measuring 60 pounds on the right and 65 pounds on the left. Range of motion findings were recorded of the right wrist showing 65 degrees of extension, 70 degrees of flexion, 10 degrees of radial deviation and 40 degrees of ulnar deviation. The left wrist showed 70 degrees of extension, 70 degrees of flexion, 60 degrees of ulnar deviation and 20 degrees of radial deviation. Dr. Komes found that appellant had a 2 percent impairment based on a radial deviation of the right wrist of 10 degrees at Figure 29, page 38 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). With respect to sensation at Tables 11 and 15, he noted that decreased sensibility with or without abnormal sensation or pain, which is forgotten during activity, yields 2 percent deficit, with maximum median nerve sensory deficit of 38 percent. By multiplying 38 percent times 2 percent, he concluded that there was one percent impairment of the left arm and 1 percent impairment of the

right arm. Combining two percent range of motion deficit and one percent sensory deficit gives an impairment rating of three percent of the right upper extremity. Combining one percent sensory deficit with zero percent range of motion deficient and zero percent strength deficit yields an impairment rating of one percent of the left upper extremity. Dr. Komes listed the date of maximum medical improvement as October 15, 1999.

An Office medical adviser reviewed the findings of Dr. Komes and determined that his impairment rating conformed to the A.M.A., *Guides*.

In a decision dated December 5, 2000, the Office issued a schedule award for one percent impairment of the left extremity and three percent impairment of the right extremity.

Appellant requested a hearing, which was held on May 31, 2001.

At the hearing appellant submitted a report dated January 24, 2000 by Dr. David G. Paff, who noted appellant's symptoms and physical findings. He indicated that appellant had normal grip strength, a negative Tinel's test over the median ulnar nerve at the wrist and a slightly positive Phalen's test 45 seconds bilaterally with tingling in the tips of her first 3 digits. Appellant was also noted as having a mildly positive Finkelstein's test on the right. There was tenderness over the carpometatarsal joint on the right and none on the left. Dr. Paff concluded that appellant had reached maximum medical improvement and, according to Table 16, page 3/57 of the 4<sup>th</sup> edition of the A.M.A., *Guides*, that appellant had 15 percent permanent impairment of each upper extremity due to entrapment neuropathy.

The Office sent a copy of Dr. Paff's report to an Office medical adviser, who opined in an August 10, 2001 report, that "Dr. Paff's PPI [permanent partial impairment] rating was not supported by objective physical finding. On the basis of physical evaluation data, I was unable to understand how he obtained 15 PPI of either upper extremity using the [A.M.A., *Guides*]." The Office medical adviser concluded that Dr. Paff's report did not contain objective medical evidence to support change of the previous schedule award.

In a decision dated September 4, 2001, an Office hearing representative affirmed the Office's December 5, 2000 decision.

By letter dated January 8, 2002, appellant requested reconsideration and submitted a report from Dr. Curtis D. Mather, an orthopedic surgeon, dated November 15, 2001. Dr. Mather noted appellant's history of injury and recorded physical findings. The right and left hand was each noted as having a negative Tinel's at the wrist, good thumb opposition, but significant thenar muscle atrophy with spooning present. The diagnosis was status post carpal tunnel release, bilateral upper extremities, with residual thenar atrophy. Under the 5<sup>th</sup> edition of the A.M.A., *Guides*, he opined that appellant had five percent impairment of the right extremity and five percent impairment of the left extremity. His rating was based on "decreased strength, most likely 25 percent loss of strength of her hands, due to the thenar atrophy that is occurring." Dr. Mather further stated:

"She does not have any deficit of sensory. Total motor deficit of the median nerve below the midforearm level would be 10 percent of the upper extremity. I feel that this patient has a 50 percent combined motor and endurance loss;

therefore, this would account for the 5 percent impairment that I have placed on to each extremity.”

The Office sent a copy of Dr. Mather’s report to an Office medical adviser for comment. In a January 28, 2002 report, Dr. Daniel D. Zimmerman states:

“[Dr. Mather] claims that [appellant] has atrophy of such severity of the thenar musculature that she demonstrates spooning, a subjective concept that I find somewhat improbable when the grip strengths are so satisfactory bilaterally. When one consults Table 16-31, it is noted that this claimants grip strength for a female even if she did manual work is greater than 24.2Kg or 61.46 pounds. Grip strengths in this claimant’s age group from Table 16-32 are mostly less than 72 pounds in the [right upper] extremity and 70 pounds in the left upper extremity. Dr. Mather indicates that a grade of 50 percent from Table 16-11 is the basis of the rating in conjunction with the 10 percent maximum for weakness in the distribution of the median nerve from Table 16-15. To even contemplate a grade of 50 percent from Table 16-11, it is necessary to satisfy the requirements of grade 3 ‘complete active range of motion against gravity only, without resistance.’ This claimant’s grips on the [right and left] sides even considering the reported thenar atrophy, would not be accepted medically as satisfying the requirements of the Table. The grip strengths as reported by Dr. Mather justify a grade 5 or 0percent motor deficit from Table 16-11.”

Dr. Zimmerman concluded that Dr. Mather’s report did not justify an increase in appellant’s schedule award for bilateral carpal tunnel syndrome.

In a decision dated January 29, 2002, the Office denied modification of its prior decision the Office’s prior schedule award decision.

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing federal regulation,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> *Supra* note 2.

Initially, the Board notes that Dr. Mather's report does not reference specific section, page, Tables or Figure numbers with respect to the physician's impairment rating of five percent for each extremity. He simply noted that appellant's loss of grip strength based on thenar atrophy, which he estimated to be 25 percent. Because Dr. Mather's report does not adequately reference the 5<sup>th</sup> edition of the A.M.A., *Guides*, the Office correctly sent a copy of his report to an Office medical adviser for review. Dr. Zimmerman reviewed Dr. Mather's report and pointed out that the measurements for grip strength reported in the record did not support any finding of impairment under Tables 16-31 or 16-30 as appellant's grip strength exceeded the values listed in the tables for females in her age group and a manual laborer. Dr. Zimmerman determined under Table 16-11 that appellant had 0 percent impairment of the upper extremities based on the recorded grip strengths and the physical findings of normal range of motion. Because Dr. Zimmerman's opinion does not support that appellant has increased impairment of the upper extremities, the Office properly denied her claim for an increased schedule award.

The decision of the Office of Workers' Compensation Programs dated January 29, 2002 is hereby affirmed.

Dated, Washington, DC  
December 27, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member