

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT ALLEN SENSION and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Cherry Point, NC

*Docket No. 02-1724; Submitted on the Record;
Issued December 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 19 percent permanent impairment of each upper extremity, for which he received schedule awards.

Appellant's claim filed on October 5, 1999 was accepted for bilateral carpal tunnel syndrome, ulnar nerve palsy of the elbows and thoracic outlet syndrome. Appellant underwent release surgery on his elbows and wrists on December 10 and 15, 1999 and returned to work on January 31, 2000 with some restrictions on reaching overhead.

A magnetic resonance imaging (MRI) scan on February 28, 2000 showed mild degenerative disc disease at C6-7 but no spinal stenosis or nerve root impingement. On April 11, 2000 Dr. Ray B. Armistead, a Board-certified orthopedic surgeon, determined that appellant had an eight percent permanent impairment of each upper extremity, based on sensory dysfunction of the median wrist nerve. The Office medical adviser agreed with this impairment rating for carpal tunnel syndrome.

On May 30, 2000 the Office issued an eight percent schedule award for permanent impairment of each upper extremity, running for 50 weeks from April 11, 2000 to March 27, 2001. On October 2, 2000 appellant filed a claim for an additional schedule award, based on the September 21, 2000 report of Dr. Armistead. He found a 38 percent impairment of both upper extremities for additional sensory deficits, possibly related to appellant's thoracic outlet syndrome but also due to cumulative trauma from working with his arms overhead. Dr. Armistead added that his rating incorporated the impairment from carpal tunnel syndrome.

By letter dated November 1, 2000, the Office asked Dr. Armistead to clarify his impairment rating. On December 4, 2000 Dr. Armistead stated that the 38 percent impairment for both upper extremities was correct because appellant's thoracic outlet syndrome was a component of his neural deficiencies, based on sensory and motor function loss, in the median and ulnar nerves of both arms.

On February 9, 2001 the Office asked Dr. Armistead to review his notes and provide an impairment rating for carpal tunnel syndrome and spinal nerve deficiencies. By letter dated March 12, 2001, Dr. Armistead explained his impairment rating for the right upper extremity. The Office sought further clarification on May 15, 2001 and Dr. Armistead responded on April 3, 2001 that the impairment rating for the right upper extremity was identical to that for the left.

The Office referred appellant to Dr. Noel B. Rogers, a Board-certified orthopedic surgeon, who examined appellant on October 15, 2001 and provided an impairment rating of four percent for each upper extremity. Dr. Rogers noted that appellant had mentioned his thoracic outlet syndrome, but the Office had asked him to evaluate only appellant's carpal tunnel syndrome.

Subsequently, the Office medical adviser stated that there was no provision for impairment due to thoracic outlet syndrome and that a rating should be determined the same way as for neural deficiencies. On February 19, 2002 Dr. Rogers evaluated appellant for sensory loss and pain due to his thoracic outlet syndrome and determined an 11 percent impairment of both upper extremities.

The Office medical adviser reviewed Dr. Rogers' findings and agreed with his assessment. On March 13, 2002 the Office issued a schedule award for an additional 11 percent permanent impairment of each upper extremity. The award ran for 34 weeks from February 19 to October 17, 2002.

The Board finds that this case is not in posture for decision due to a conflict in the medical opinion evidence.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.³ The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.⁴

In this case, appellant's wrists reached maximum medical improvement on April 11, 2000 when Dr. Armistead found an eight percent impairment of each upper extremity based on the accepted carpal tunnel syndrome. On September 21, 2000 Dr. Armistead used the fourth

¹ 5 U.S.C. §§ 8101-8109.

² 5 U.S.C. § 8107.

³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁴ 20 C.F.R. § 10.404 (1999).

edition of the A.M.A., *Guides*, finding a 38 percent impairment based on Table 15, page 54, for sensory deficit and pain of the median nerves below the mid-forearm.

On February 9, 2001 the Office asked Dr. Armistead to follow the attached instructions from the A.M.A., *Guides* for rating impairment due to carpal tunnel syndrome and spinal nerve deficiencies. The Office stated that the calculation of impairment depended on a demonstration of motor loss or sensory deficit/pain or both. The Office noted that Tables 16-10 and 16-13 covered pain and sensory deficit, and that Tables 16-11 and 16-13 dealt with motor loss.

In reports dated March 12 and April 3, 2001, Dr. Armistead noted that he used Table 16 of the fifth edition of the A.M.A., *Guides* and found a 39 percent impairment of the median nerve in the right upper extremity due to sensory loss and pain.

Sensory and motor deficits of the ulnar nerve yielded a 40 percent impairment, for a total of 79 percent. This value was modified by the severity index, in which both deficits were determined to be classification III, according to Table 16/10, resulting in a 38 percent⁵ impairment of each upper extremity. On May 24, 2001 Dr. Armistead stated that his 39 percent rating for each upper extremity was based on three problems, carpal tunnel syndrome, ulnar nerve palsy and thoracic outlet syndrome, not on carpal tunnel syndrome alone. He added that the rating covered deficits of all three major nerves in each upper extremity.

In response to the Office's request for clarification, Dr. Rogers, the second opinion specialist, stated that, because he found no motor loss on examination, only a class III impairment, defined as "normal sensation except for pain or decreased sensation with or without pain present during activity," was appropriate. He noted that the tables in Chapters 15 and 16 of the A.M.A., *Guides* were for muscular evaluation and that thoracic outlet syndrome was a peripheral disorder. Dr. Rogers stated that Tables 13-23 and 13-24 were the appropriate tables. Dr. Rogers concluded that appellant had a minimal rating of 11 percent for each upper extremity.

The Board finds that, because Dr. Armistead included motor loss in his evaluation of appellant's impairment and Dr. Rogers did not, there is a conflict in the medical opinion evidence. Thus, the issue of appellant's entitlement to a schedule award for permanent partial impairment of both upper extremities remains unresolved. Therefore, the case will be remanded to the Office for referral to an impartial medical examiner to resolve the conflict. After such further development as the Office deems necessary, a *de novo* decision shall be issued.

⁵ The figure of 38 appears to be a typographical error. Although FECA Bulletin No. 01-05 issued on January 29, 2001 stated that awards calculated according to any previous edition should be evaluated according to the edition originally used, Dr. Armistead determined a greater 39 percent rating using the fifth edition of the A.M.A., *Guides*.

The March 13, 2002 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
December 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member