

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDDIE HAWKINS and U.S. POSTAL SERVICE,
POST OFFICE, Concord, CA

*Docket No. 01-546; Submitted on the Record;
Issued February 5, 2002*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's wage-earning capacity was represented by the position of modified distribution clerk effective May 22, 2000; and (2) whether appellant has greater than a 10 percent permanent loss of use of each arm.

This case is on appeal before the Board for a second time. By decision and order dated August 12, 1998, the Board remanded the case due to an unresolved conflict of medical opinion on whether appellant had carpal tunnel syndrome causally related to her employment.¹

On remand the Office referred appellant, the case record and a statement of accepted facts to Dr. Noah Weiss, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion. Based on Dr. Weiss' May 6 and June 30, 1999 reports, the Office accepted bilateral carpal tunnel syndrome and authorized surgery.

Dr. Weiss performed carpal tunnel release surgery on appellant's right wrist on February 22, 2000 and on her left wrist on March 28, 2000. In a report dated May 18, 2000, he stated that appellant had recovered full range of motion, that her sensation was intact and that she had some mild grip weakness and soreness in her hands. Dr. Weiss stated that appellant could return to work on May 22, 2000 with the restriction of no sorting of mail, either manually or by machine.

On June 6, 2000 appellant filed a claim for a schedule award.

By letter dated June 19, 2000, the Office requested that Dr. Weiss evaluate appellant's permanent impairment due to her bilateral carpal tunnel syndrome. In a report dated July 12, 2000, Dr. Weiss noted that appellant was working full time with a restriction of no sorting of

¹ Docket No. 96-539.

mail and that she had multiple diffuse complaints. He stated that examination revealed no obvious atrophy, completely unreliable two-point discrimination testing, and quite unreliable grip strength testing. Dr. Weiss stated that appellant was permanent and stationary, and that no further medical treatment was needed.

On August 21, 2000 an Office medical adviser reviewed the medical evidence and stated that appellant's residual carpal tunnel symptoms were consistent with mild median nerve entrapment at the wrists, resulting in a 10 percent permanent impairment of each arm.

On September 12, 2000 the Office issued appellant a schedule award for a 10 percent permanent loss of use of each arm.

By decision dated October 6, 2000, the Office found that appellant's position of modified distribution clerk fairly and reasonably represented her wage-earning capacity effective May 22, 2000 and that she had no loss of wage-earning capacity.

The Board finds that the Office properly determined that appellant's wage-earning capacity was represented by the position of modified distribution clerk effective May 22, 2000.

Generally, wages actually earned are the best measure of a wage-earning capacity, and in the absence of evidence showing they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure.²

In a report dated May 18, 2000, Dr. Weiss concluded that appellant could return to her full duties on May 22, 2000 with a restriction of no sorting of mail. In a report dated July 12, 2000, Dr. Weiss reported that appellant was working full time with a restriction against sorting mail, and that she was permanent and stationary. There is no evidence that the modified distribution clerk position to which appellant returned on May 22, 2000 did not fairly and reasonably represent appellant's wage-earning capacity. There is also no evidence that the wages appellant received in this position were less than the pay on May 22, 2000 of the position she held when she sustained her employment injury.

The Board finds that appellant has no greater than a 10 percent permanent loss of use of each arm related to her carpal tunnel syndrome.

The schedule award provision of the Act³ and its implementing regulation⁴ 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*

² *Hubert F. Myatt*, 32 ECAB 1994 (1981); *Lee R. Sires*, 23 ECAB 12 (1971).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

Impairment has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

An Office orthopedic consultant properly applied Table 16, titled *Upper Extremity Impairment Due to Entrapment Neuropathy*, of Chapter 3 of the 4th edition of the A.M.A., *Guides* to the findings reported by Dr. Weiss. In his May 18, 2000 report, Dr. Weiss stated that appellant had full range of motion, intact sensation and mild grip weakness. As illustrated in the text accompanying Table 16, this amounts to a mild impairment of the median nerve at the wrist, for which the table allots 10 percent impairment of the arm. There is no evidence that appellant has greater than a 10 percent permanent loss of use of each arm due to her accepted carpal tunnel syndrome.

The decisions of the Office of Workers' Compensation Programs dated October 6 and September 12, 2000 are affirmed.

Dated, Washington, DC
February 5, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member